

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

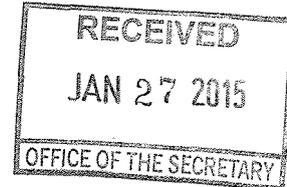
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ADMINISTRATIVE PROCEEDING
File No. 3-15928

In the Matter of

Siming Yang,

Respondent.



**DECLARATION OF EMILY A. HELLER IN SUPPORT OF
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

EMILY A. HELLER, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney with the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"), and co-counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division's Motion for Summary Disposition ("Motion").
2. I have personal and first-hand knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.
3. Attached hereto as Exhibit A is a true and correct copy of the Second Amended Complaint filed on February 6, 2013.
4. Attached hereto as Exhibit B is a true and correct copy of the Jury Instructions filed on January 13, 2014.

5. Attached hereto as Exhibit C is a true and correct copy of the Jury's Verdict entered January 13, 2014.

6. Attached hereto as Exhibit D is a true and correct copy of the Final Judgment entered May 27, 2014.

7. Attached hereto as Exhibit E is a true and correct copy of the Memorandum Opinion and Order entered May 27, 2014.

8. Attached hereto as Exhibit F is a true and correct copy of the Service Contract entered into March 27, 2013.

9. Attached hereto as Exhibit G is a true and correct copy of the Fidelity Account Opening Documents and Account Statements.

10. Attached hereto as Exhibit H is a true and correct copy of Defendant Siming Yang's Response to Plaintiff's First Set of Interrogatories filed on May 8, 2014.

11. Attached hereto as Exhibit I is a true and correct copy of the Prehearing Conference Transcript.

12. Attached hereto as Exhibit J is a true and correct copy of the Order Granting Motion to Amend Order Instituting Proceedings entered on November 19, 2014.

13. Attached hereto as Exhibit K is a true and correct copy of Siming Yang's H-1B Application.

14. Attached hereto as Exhibit L is a true and correct copy of BAMCO's Letter in Support of Siming Yang's H-1B application.

15. Attached hereto as Exhibit M is a true and correct copy of the Approval of Siming Yang's H-1B petition.
16. Attached hereto as Exhibit N is a true copy and correct of an excerpt of the January 8, 2014 trial transcript.
17. Attached hereto as Exhibit O is a true and correct copy of the Baron Capital, Inc. Background Investigation Consent Form.
18. Attached hereto as Exhibit P is a true and correct copy of the Baron Capital, Inc. Employee Questionnaire.
19. Attached hereto as Exhibit Q is a true and correct copy of Siming Yang's Baron Capital, Inc. Offer Letter.
20. Attached hereto as Exhibit R is a true and correct copy of Siming Yang's Baron Capital, Inc. Paychecks.
21. Attached hereto as Exhibit S is a true and correct copy of Siming Yang's Acceptance Form for Baron Capital, Inc.'s Employee Handbook.
22. Attached hereto as Exhibit T is a true and correct copy of Siming Yang's Service Contract.
23. Attached hereto as Exhibit U is a true and correct copy of Siming Yang's Response to Motion for Remedies filed on May 28, 2014.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 2015.



Emily A. Heller

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Case No. 12-cv-02473
)	
v.)	
)	Honorable Matthew F. Kennelly
SIMING YANG, PRESTIGE TRADE INVESTMENTS LIMITED, CAIYIN FAN, and SHUI CHONG (ERIC) CHANG,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff United States Securities and Exchange Commission (the “Commission”) alleges as follows:

NATURE OF THE ACTION

1. This case concerns the Defendants’ highly profitable insider trading in the securities of Zhongpin Inc. (“Zhongpin”) and other illegal acts perpetrated by Defendant Siming Yang (“Yang”).

2. Defendants purchased a substantial amount of Zhongpin shares and call options (a contract that grants the purchaser the right to buy an agreed number of shares by a certain time for a certain price – effectively allowing the option purchaser to place a bet that the share price will rise) in the days and weeks before Zhongpin’s March 27, 2012 public announcement that its Chairman and CEO offered to acquire all of Zhongpin’s outstanding stock for \$13.50 per share (a 46% premium over the previous trading day’s closing price). The market reaction to Zhongpin’s public announcement was immediate:

the day the proposal was announced, Zhongpin's share price increased approximately 21.8%.

3. The Defendants' trading of Zhongpin securities generated unrealized gains of over \$8.7 million. On information and belief, each Defendant purchased Zhongpin securities while in the possession of, and on the basis of, material, nonpublic information.

4. Defendant Yang was employed as a research analyst by a New York-based registered broker/dealer and investment adviser and provided analysis on companies in China and emerging markets for two of his employer's mutual funds. In January 2012 -- while still employed -- Yang secretly created his own start-up investment firm, Prestige Trade Investments Limited ("Prestige"). In February 2012, Yang traveled to China to recruit investors for Prestige. On his trip, Yang raised approximately \$30 million from investors for Prestige's fund. Yang then returned to his home in the United States without informing his employer of the existence of Prestige or the fact that he had raised \$30 million for his own private fund.

5. In a presentation to prospective investors, Yang had indicated that Prestige was designed to be a diversified fund with investments across industries, sectors and countries. Instead, Yang prepared to place all of Prestige's assets in one company -- Zhongpin.

6. Knowing that he was about to place enormous, market-moving purchases of Zhongpin stock for Prestige's account, Yang first sought to take advantage by purchasing Zhongpin stock and call options for a personal brokerage account that he held jointly with Defendant Caiyin Fan. On March 14, 2012, Yang purchased nearly 2,000 Zhongpin call

options (almost all of them very risky, near-term “out of the money” options) and 50,000 shares of Zhongpin stock through his joint personal account.

7. The next day, Yang began a stock-buying binge for Prestige’s account that resulted in the purchase of over 3 million shares of Zhongpin stock during the two weeks leading up to Zhongpin’s public announcement. Yang’s purchases of Zhongpin stock for Prestige’s account represented about 41% of the total trading volume during the period and roughly 8% of the total outstanding shares of Zhongpin. All tolled, by the end of Yang’s purchasing spree, over 93% of Prestige’s assets were invested in Zhongpin stock.

8. At every turn, Yang has sought to obscure his trading activity from scrutiny. Yang never told his employer about his brokerage accounts, his creation of a new private fund, his efforts to raise funds from investors, or his trading in Zhongpin, even though his employer had policies in place that required disclosure of employee brokerage accounts and barred trading in public companies. Yang also lied to his broker about his occupation and residence, presumably to avoid the heightened scrutiny that would have come if Yang had disclosed his true place of employment. Further, just before Yang left his job, he deleted documents from his computer that related to Prestige and his plan to purchase Zhongpin securities. Among the documents he attempted to destroy was a non-public November 2011 presentation by a Hong Kong-based investment bank that was part of a proposed plan to take Zhongpin private through a management buyout.

9. Yang’s attempt to cover up his personal trading included a false filing with the Commission. On April 2, 2012, Yang and two other managing executives of Prestige filed a Schedule 13D with the Commission, disclosing Prestige’s acquisition of Zhongpin shares.

In that submission, Yang did not disclose his personal trading in Zhongpin securities as he was required to do.

10. Defendant Shui Chong (Eric) Chang (“Chang”) also purchased Zhongpin securities based on material, non-public information.

11. Defendant Chang’s wife was Defendant Yang’s friend and former co-worker, and she placed trades for Prestige’s account at Yang’s direction. On or around March 14, 2012, Chang came across a communication between his wife and Yang that revealed Prestige’s plans to purchase a large, market-moving volume of Zhongpin stock. Chang claims that he did not disclose to his wife that he had learned of Prestige’s plans. To profit from this information, Chang immediately began buying Zhongpin stock and call options for his personal account. Over the ensuing days, Chang surreptitiously observed his wife placing initial orders to purchase shares of Zhongpin stock for the Prestige account and continued to purchase Zhongpin securities for himself. In total, Chang purchased 4,035 Zhongpin call options and 32,500 shares of Zhongpin stock for a total cost of over \$446,000 during the two weeks leading up to Zhongpin’s announcement of the going-private proposal. By the close of trading on March 27, 2012, Chang had unrealized gains of \$496,823 – more than a 100% gain in less than 14 days. Chang had unrealized gains of \$64,537 as of March 23, 2012, the final day on which Prestige purchased Zhongpin stock.

JURISDICTION AND VENUE

12. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d),

78u(e), 78u-1] and Section 209 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-9].

13. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

15. The individual Defendants are citizens and residents of Hong Kong or the People’s Republic of China (“PRC”). The sole entity Defendant, Prestige, is a British Virgin Islands (“BVI”) corporation. According to its brokerage records, Prestige is based in Guangzhou, Guangdong Province, China.

16. Until at least April 1, 2012, Defendant Yang maintained a residence in New York, where he was staying on a work visa. He is not a permanent resident of the United States within the meaning of the venue provisions.

17. The Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged herein.

18. All of the trading described herein occurred through U.S.-based brokerage accounts and was placed through U.S.-based securities exchanges. Moreover, at all times relevant to the Complaint, the target company of the trading at issue – Zhongpin – was incorporated in the United States and its securities traded on U.S.-based exchanges and were registered with the Commission.

19. The Defendants will, unless enjoined, continue to engage in the acts, practices, transactions, and courses of business set forth in this Complaint, or in acts, practices, transactions, and courses of business of similar purport and object.

FACTS

Defendants

20. Siming Yang (“Yang”), age 35, is a PRC citizen. From January 2008 through at least April 2012, Yang maintained a residence in New York, New York. Until March 2012, Yang was employed as a research analyst with a New York-based registered broker/dealer and investment adviser that manages a family of mutual funds. Yang was terminated from that position effective March 30, 2012. Yang has a personal brokerage account with Wang Investment Associates (“Wang Investments”), which also is based in New York, New York. Yang helped found Prestige in January 2012.

21. Prestige Trade Investments Limited (“Prestige”) is a BVI corporation, founded by Yang and others. Prestige has no substantive operations in the BVI. Yang helped create Prestige in January 2012. Prestige has a bank account at a China-based bank and a brokerage account at Interactive Brokers, LLC (“Interactive Brokers”), which has an office in Chicago, Illinois. In its account opening documents, Prestige describes itself as a “long term, research driven, deep value investor” that “actively pursue[s] shareholder activism...”

22. Caiyin Fan (“Fan”), age 38, is a PRC citizen and, according to brokerage records, is a resident of Guangzhou, Guangdong Province, China. Fan is a joint

accountholder with Yang in a brokerage account held at New York-based Wang Investments.

23. Shui Chong (Eric) Chang (“Chang”), age 33, is a citizen and resident of Hong Kong. Chang was employed as a securities analyst in New York, New York from August 2001 to October 2003. Chang has a brokerage account with E*Trade Financial (“E*Trade”). Chang’s wife is Yang’s friend and former co-worker, and she placed trades for Prestige’s account.

Additional Relevant Entity

24. Zhongpin, Inc. (“Zhongpin”) is a Delaware Corporation headquartered in Changge City, Henan Province, China. Zhongpin is a meat and food processing company that specializes in pork and processed pork products. The company’s common stock is registered under Section 12(b) of the Exchange Act and trades on the NASDAQ (under the ticker symbol “HOGS”). Its options trade on the Chicago Board Options Exchange and other options markets.

Defendant Yang Secretly Opens a Joint Brokerage Account With Caiyin Fan

25. Yang graduated with a Masters of Business Administration from Columbia University in New York, New York in 2008, and he maintained a residence in New York, New York between 2008 and 2012.

26. From 2008 until March 30, 2012, Siming Yang was employed as a research analyst at a New York-based broker/dealer and registered investment adviser where he provided analysis of companies based in China and emerging markets.

27. At all times relevant to this Complaint, Yang's employer maintained policies designed to prevent insider trading. Among other things, those policies (a) prohibited employees from trading in equities of publicly traded companies, (b) required employees to seek preclearance before executing any personal trades, and (c) required employees to disclose all brokerage accounts.

28. Yang's employer provided Yang with training related to the policies identified in paragraph 27.

29. In December 2008, Yang placed three trades in the common stock of publicly traded companies without obtaining preclearance from his employer. At that time, members of the company's management discovered the trades, informed Yang of his violations and explained the company's policies to Yang in further detail.

30. On November 25, 2011, Yang and Fan opened a joint brokerage account at Wang Investments, a brokerage firm located in the United States.

31. In the account opening form, Yang (a) stated that he resided in Guangzhou, Guangdong, China, (b) identified himself as an "accountant" with "Guangzhou Goldstar Retail," and (c) stated that he was not an "associated person of a Broker." None of those statements were true. At the time he filled out his account opening forms with Wang Investments, Yang had resided in New York for over three years and worked for a New York-based broker-dealer and investment adviser.

32. Along with the account opening documents, both Yang and Fan each completed an IRS Form W-8BEN Certificate of Foreign Status of Beneficial Owner. The Form W-8BEN is tax form to be used by non-resident aliens. In his Form W-8BEN, Yang

certified that he was a resident of Guangzhou, Guangdong, China. He did not disclose that, at that time, he was a full-time resident of New York, NY.

33. Yang did not disclose the Wang Investments brokerage account to his employer although he was required to do so under his employer's policies.

34. Further, Yang affirmatively lied to his employer about the existence of the Wang Investments account. In November 2011 and March 2012, Yang falsely certified to his employer that he did not hold a personal brokerage account.

Yang Creates Prestige and Raises Almost \$30 million From Investors

35. While still employed as a research analyst, Yang secretly began taking steps to establish his own investment firm.

36. In January 2012, Yang helped form Prestige under the laws of the BVI.

37. Yang was a Director of Prestige, a part-owner of Prestige, Prestige's General Manager and was in charge of all trading decisions for Prestige.

38. Unbeknownst to his then-employer, Yang sought to create a new private investment fund through Prestige.

39. Yang acted as an investment adviser to Prestige. He was Prestige's "investment manager," was responsible for creating Prestige's investment strategy and directed all trades on Prestige's behalf. In exchange for those services, Prestige investors were to be charged a management fee. Yang, in turn, was to receive a salary equal to .5% of Prestige's net asset value and a bonus tied to Prestige's investment gains.

40. As an investment adviser, Yang owed a fiduciary duty to Prestige.

41. During January and February 2012, while he was living and working in New York, Yang created a roadshow presentation to market Prestige to prospective investors.

42. In mid-February 2012, Yang told his New York-based employer that he needed to travel to China due to a death in his family.

43. On February 16, 2012, Yang met with an individual at a hotel in China to finalize the roadshow presentation. Later that week, Yang began a roadshow to market Prestige's investment fund to potential investors.

44. On or about February 19, 2012, Yang presented the roadshow materials to investors. The roadshow materials that Yang created and disseminated described Prestige as a diversified investment, declaring that the investment portfolio would be "properly diversified...by industry...by sector and country."

45. In reality, of the \$29,999,990.69 deposited into Prestige's bank account in Hong Kong, approximately \$28,123,578.10 (93.7 % of the total) was used to purchase the common stock of a single company – Zhongpin, Inc. The rest remained in cash.

46. Drafts of Yang's presentation materials also shed light on how he chooses investments for Prestige, stating that, in selecting companies in which to invest, ideas come from "multiple aspects" including "exclusive information networks," "CEO networks," and "current employees."

47. The presentation to prospective Prestige investors also suggested that Yang was aware of non-public plans of management to privatize certain companies, stating that many of the companies in which he was considering investing Prestige's money "are proactively considering management level privatization."

48. While he was in China, Yang repeatedly told his employer that he was unable to return to the United States due to issues with his visa and passport and that he was researching companies for his employer at his own cost while stuck overseas. Yang never disclosed to his employer (a) the existence of Prestige or (b) that Yang had used his China trip to raise money for Prestige.

Yang's Fraudulent "Front-Running" Scheme: Yang Places Personal Trades In Advance of Trades He Placed on Behalf of Prestige

49. Yang's roadshow to prospective investors was successful. On March 9, 2012, while still in China, Yang opened a bank account for Prestige at a China-based bank. Between March 13 and March 20, 2012, the Prestige account received \$30 million in deposits from at least five investors.

50. Prestige's corporate records show that Yang was given credit for a \$3 million deposit to Prestige. However, Prestige's bank records do not reflect any deposits from Yang. Rather, the \$3 million appears to reflect a payment to Yang from one or more of Prestige's investors.

51. On March 13, 2012 – just two weeks before Zhongpin's announcement of the proposal to take the company private – Yang opened a brokerage account in Prestige's name at Interactive Brokers, a brokerage firm based in the United States.

52. After the market closed on March 13, 2012, Zhongpin announced weaker than expected earnings for the 4th quarter of 2011. Zhongpin's stock price dropped more than 20% from \$10.52 on March 13 to \$8.36 on March 14.

53. Despite Zhongpin's disappointing earnings and resulting price drop, Yang immediately started to place large, risky bets that Zhongpin's stock price would shoot up in the very near future.

54. As Yang planned to purchase large quantities of Zhongpin stock and options, Yang engaged in a fraudulent "front-running" scheme, whereby he sought to personally profit by purchasing Zhongpin securities in his joint personal account when he knew that he would soon complete massive, market moving purchases of Zhongpin stock on behalf of Prestige.

55. Knowing that he planned to buy a huge sum of Zhongpin shares for Prestige's account, Yang first sought to take advantage of this buying opportunity for himself and purchased 50,000 shares of Zhongpin stock and 1,978 Zhongpin call options in his joint account with Fan on March 14.

56. All of the call options that Yang purchased on March 14, 2012 were "out of the money." In other words, the strike price of the options – \$10.00 per share – exceeded the market price of Zhongpin's common stock at the time the options were purchased.

57. The overwhelming majority of the options Yang purchased on March 14, 2012 were also near-term, with expiration dates in mid-April.

58. Yang's near-term, "out of the money" options presented a unique risk: if the share price of Zhongpin did not reach \$10.00 per share by the option's rapidly approaching exercise date, that option would become worthless.

59. Fortunately for Yang, he knew that demand for Zhongpin shares would soon be fueled by his purchases on Prestige's behalf.

60. On March 15, 2012 – the day after Yang started buying his Zhongpin call options – Yang bought additional Zhongpin call options for his personal account and began buying hundreds of thousands of shares of Zhongpin stock for Prestige’s account.

61. Prestige’s purchases were massive: They represented about 41% of the trading volume of Zhongpin stock during the two-week period before the March 27, 2012 announcement and about 8% of Zhongpin’s total outstanding common stock.

62. By the time Prestige finished its purchases of large blocks of Zhongpin stock, Zhongpin’s share price had risen over 15% -- from \$8.31 per share (the closing price the day that Prestige started buying) to \$9.60 per share (the closing price on March 23, 2012, the day of Prestige’s final purchase).

63. Yang did not disclose to Prestige’s investors that he would place his own personal trades in the same securities purchased on behalf of Prestige or that he would try to gain an extra advantage by placing his personal trades before placing massive, market-moving trades on behalf of Prestige.

64. Yang’s “front-running” of Prestige’s trades was material. First, by not disclosing to investors that he was placing trades for his own benefit before those of his investors, Yang was hiding a serious conflict of interest from Prestige’s investors. Moreover, by placing his personal Zhongpin stock trades before buying stock on behalf of Prestige, Yang was able to obtain a financial benefit: he was, all tolled, able to secure a more lucrative return for himself and Caiyin Fan.

65. By engaging in his “front running” scheme – and failing to disclose the resulting conflict of interest to Prestige’s investors – Yang engaged in a fraud, and breached his fiduciary duty to Prestige.

66. In conducting his fraudulent front-running scheme, Yang acted with scienter. At the time he placed trades in his joint personal account, he knew that he was about to purchase enormous quantities of Zhongpin stock through Prestige. Yang knew – or recklessly disregarded – that he and Fan would obtain a personal benefit from placing his personal trades before placing Prestige’s trades.

Yang, Fan and Prestige Make Huge Trading Gains By Buying Stock and Options in the Two Weeks Before Zhongpin Announces the Proposal to Go Private

67. From March 14 through March 26, 2012 – the two weeks before Zhongpin publicly disclosed the proposal to go private – Yang and Fan made net purchases of 2,571 Zhongpin call options through their Wang Investments account for a net purchase price of \$182,500.

68. During the same time period, Yang and Fan made net purchases totaling 58,000 shares of Zhongpin stock through their Wang Investments account for a total net purchase price of \$506,462.

69. With those purchases, Zhongpin securities represented the overwhelming majority of securities in Yang’s and Fan’s joint account. By March 26, 2012 – the day before Zhongpin’s public announcement of its CEO’s privatization proposal – Zhongpin securities represented 84% of the value of the equities in the Yang/Fan joint account and (including obligations related to short positions in the account) represented 104% of the total account value.

70. Yang did not disclose or seek preclearance for these trades from his employer – even though he was required to do so under the company’s trading policies.

71. Between March 15 and March 21, 2012, Yang transferred \$29.8 million from Prestige’s overseas bank account into Prestige’s brokerage account at Interactive Brokers. Prestige used these funds to purchase over 3 million shares of Zhongpin stock in the two weeks before Zhongpin’s announcement of the proposal to take the company private.

72. Yang did not disclose or seek preclearance for these trades from his employer – even though he was required to do so under the company’s trading policies.

73. Before the NASDAQ opened on Tuesday March 27, 2012, Zhongpin announced that its Chairman and CEO had submitted a non-binding proposal to take Zhongpin private by acquiring all of Zhongpin’s common stock for \$13.50 per share. The \$13.50 per share price represented a 46% premium over the previous day’s closing price.

74. In response to the announcement, Zhongpin’s share price rose 21.8% from the March 26 close of \$9.21 per share to a March 27 close of \$11.22 per share.

75. At the close of trading on March 27, 2012 – the first trading day after Zhongpin’s announcement – Prestige had earned unrealized gains of over \$7.6 million on its timely purchases of Zhongpin stock.

76. For their part, Yang and Fan garnered \$611,961 in unrealized gains from their timely purchases of Zhongpin stock and call options as of the day following the announcement.

77. The New York-based registered broker/dealer and investment adviser terminated Yang’s employment effective March 30, 2012 for performance-based reasons.

78. Following Yang's termination, his employer located a number of documents related to Zhongpin that Yang had deleted from his work laptop.

79. Among other documents, Yang had deleted a non-public presentation that was created by a Hong Kong-based investment bank and detailed a plan to take Zhongpin private. The presentation was marked "HIGHLY RESTRICTED" on each page and used the code word "Project Zeus" to avoid using the name "Zhongpin." The document also contained a disclaimer that stated that the document "is not for public circulation, must not be copied, transferred or the content disclosed to any third party."

80. Yang's possession (and subsequent deletion) of the Project Zeus presentation reflects that Yang had access to material, non-public information about Zhongpin's interest in a management buy-out.

81. The "Project Zeus" presentation was not publicly distributed and, according to records from the Hong Kong investment bank, Yang was not an authorized recipient of the "Project Zeus" presentation or any other information related to Zhongpin's privatization efforts.

82. On information and belief, Yang, Fan and Prestige purchased their Zhongpin securities while in possession of, and on the basis of, material non-public information regarding the proposal to take Zhongpin private.

Yang Files a False Schedule 13D with the Commission

83. The federal securities laws require a person, group or entity that acquires beneficial ownership of more than 5% of a class of a common stock to file a Schedule 13D with the Commission disclosing, among other things, the acquirer's identity, the purpose of

the acquisition, the number of shares owned and the details of the acquirer's transactions in the stock during the previous sixty days.

84. By late March 2012, Prestige and Yang had acquired so much Zhongpin stock that they were required to file a Schedule 13D with the Commission to disclose their positions.

85. On April 2, 2012, Prestige, Yang and two other purported managing executives of Prestige (collectively, the "Reporting Persons") filed a Schedule 13D with the Commission, disclosing Prestige's acquisition of Zhongpin stock.

86. An attorney for the Reporting Persons signed the Schedule 13D on Yang's behalf over Yang's signature block.

87. Yang and the other Reporting Persons stated on the Schedule 13D that they shared voting and dispositive power over the shares and that none of them held sole voting or dispositive powers over any other shares.

88. Further, they stated that during the previous sixty days "no transactions in the Common Stock were effected by any Reporting Person" other than those disclosed on the form.

89. The Schedule 13D reflected only those shares acquired by Prestige and excluded Yang's trading in, trading authority over, and co-ownership of Zhongpin securities in his joint account with Fan – even though Yang was required to report those holdings.

90. The representations in the Schedule 13D described in paragraphs 87-88 were false when made. As of the date of filing, Yang (through his joint account with Caiyin Fan) had purchased 45,000 shares of Zhongpin stock and more than 2,500 Zhongpin call options

and had directed numerous trades in Zhongpin stock during the sixty days prior to filing the Schedule 13D.

91. The misrepresentations and omissions in the Schedule 13D regarding Yang's personal ownership of shares described in paragraphs 87-88 were material and directly related to information required to be disclosed to the investing public.

92. Later on April 2, 2012, the Reporting Persons (including Yang) filed an Amended Schedule 13D. The Amended filing contained the same misrepresentations and omissions described in paragraphs 87-88 regarding Yang's purchase of Zhongpin securities through his personal account with Defendant Fan.

93. Yang knew or recklessly disregarded that the Schedule 13D (and the April 2, 2012 Amended Schedule 13D) contained material misrepresentations and omissions regarding Yang's personal transactions in Zhongpin securities.

94. The Reporting Persons did not file an amended Schedule 13D disclosing Yang's personal trading until after the Commission filed the original complaint in this matter.

Defendant Chang's Zhongpin Trading

95. Defendant Chang has a brokerage account with E*Trade, a brokerage firm located in the United States.

96. Chang's E*Trade account was completely dormant from November 30, 2010 to March 2012. For most of that dormant period, Chang maintained an account balance of less than \$7.00.

97. Chang's wife was Yang's friend and former co-worker. In March 2012, Chang's wife began processing trades for Prestige's account at Yang's direction.

98. On or around March 14, 2012, Chang found a non-public "execution plan" that his wife had printed on their home computer showing that Prestige planned to purchase up to 10% of the outstanding shares of Zhongpin.

99. Chang decided to take advantage of that information and immediately began buying large quantities of Zhongpin stock in his E*Trade account.

100. A couple of days after seeing the execution plan, Chang obtained the login information for Prestige's account from his wife and accessed the Prestige account online. He observed that Prestige had already purchased shares of Zhongpin stock, which convinced him that Prestige was acting on the non-public "execution plan."

101. Over the ensuing days, Chang witnessed his wife placing additional orders to purchase Zhongpin stock for the Prestige account and continued to purchase Zhongpin shares in his own E*Trade account.

102. Chang did not perform any research or analysis on Zhongpin, and instead he purchased Zhongpin stock based on the material, non-public information he learned about Prestige's trading plans.

103. From March 14 through March 27, 2012 – the two weeks before Zhongpin announced the going-private proposal – Chang purchased through his E*Trade account 4,035 Zhongpin call options and 32,500 shares of Zhongpin stock for a total cost of \$446,895.

104. All of Chang's call options were particularly risky near-term, "out of the money" options. They each had a strike price of \$10 and almost all of them had an expiration date in April 2012.

105. At the close of trading on March 27, 2012, Chang had earned \$496,823 in unrealized gains on his Zhongpin securities. Chang's unrealized gains totaled \$64,537 at the close of trading on March 23, 2012, the final day on which Prestige purchased Zhongpin stock.

106. According to Chang, he did not inform his wife that he (a) had come across the non-public Prestige "execution plan," (b) monitored Prestige's account activity to confirm that Prestige was executing its non-public plan to buy up to 10% of Zhongpin's shares, and (c) was purchasing large amounts of Zhongpin securities to capitalize on the non-public information that he had obtained regarding Prestige's plans.

107. Chang purchased the Zhongpin stock and call options while in possession of, and on the basis of, material non-public information regarding Prestige's plan to purchase up to 10% of Zhongpin's outstanding stock.

COUNT I
Insider Trading
Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder
(Against Defendants Yang, Fan, and Prestige)

108. The Commission realleges and incorporates by reference paragraphs 1 through 94 as though fully set forth herein.

109. All Zhongpin shares and options referenced in this Complaint are securities, as that term is used in the Exchange Act, which are listed and traded on a domestic national exchange – *i.e.*, the NASDAQ and CBOE.

110. Upon information and belief, Defendants Yang, Fan and Prestige purchased shares and call options as set forth above, while they were in possession of, and on the basis of, material, nonpublic information regarding the intent of Zhongpin management to pursue privatization through a management buy-out of the company's outstanding stock.

Defendants Yang, Fan and Prestige: (a) knew, or recklessly disregarded, the fact that their trading was in breach of a fiduciary duty or similar duty of trust and confidence owed to the shareholders of Zhongpin, or to the source from whom they received the material, nonpublic information; and/or (b) knew or should have known that material, nonpublic information about the contemplated acquisition had been communicated to them in breach of a fiduciary or similar duty of trust and confidence.

111. Upon information and belief, any and all material, nonpublic information that Defendants Yang, Fan and Prestige received concerning Zhongpin, as set forth above, either was misappropriated by those Defendants or disclosed in exchange for a personal benefit that benefited the communicator of such information.

112. As more fully described in paragraphs 1 through 94 above, Defendants Yang, Fan and Prestige, in connection with the purchase and sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of

business which operated or would operate as a fraud or deceit upon another person, including purchasers and sellers and prospective purchasers and sellers of securities.

113. Defendants Yang, Fan and Prestige each acted with scienter.

114. By engaging in the conduct described above, Defendants Yang, Fan and Prestige, directly or indirectly, violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II
Insider Trading
Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder
(Against Defendant Chang)

115. The Commission realleges and incorporates by reference paragraphs 1 through 107 as though fully set forth herein.

116. All Zhongpin shares and options referenced in this Complaint are securities, as that term is used in the Exchange Act, which are listed and traded on a domestic national exchange – *i.e.*, the NASDAQ and CBOE.

117. Upon information and belief, Defendant Chang purchased shares and call options as set forth above, while he was in possession of, and on the basis of, material, nonpublic information regarding Prestige's plan to purchase up to 10% of Zhongpin's outstanding stock. Defendant Chang: (a) knew, or recklessly disregarded, the fact that his trading was in breach of a fiduciary duty or similar duty of trust and confidence owed to the source from whom he received the material, nonpublic information (*i.e.*, his wife); and/or (b) knew or should have known that material, nonpublic information about Prestige's

planned purchases and actual purchases had been communicated to him in breach of a fiduciary or similar duty of trust and confidence.

118. As more fully described in paragraphs 95 through 107 above, Defendant Chang, in connection with the purchase and sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state materials facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person, including purchasers and sellers and prospective purchasers and sellers of securities.

119. Defendant Chang acted with scienter.

120. By engaging in the conduct described above, Defendant Chang, directly or indirectly, violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT III

Fraud in the Purchase or Sale of Securities – Yang’s Fraudulent “Front-Running” Scheme: Violations of Exchange Act Section 10(b) and Rules 10b-5(a), (b) and (c) [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), (b) and (c)] (Against Yang)

121. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

122. As more fully described in paragraphs 49 through 66 above, Defendant Yang, in connection with the purchase and sale of securities, by the use of the means or

instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state materials facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person, including purchasers and sellers and prospective purchasers and sellers of securities.

123. Defendant Yang acted with scienter.

124. By engaging in the conduct described above, Defendant Yang, directly or indirectly, violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b) and (c)].

COUNT IV
Fraud by an Investment Adviser – Yang’s “Front- Running” Scheme:
Violations of Advisers Act Sections 206(1) and 206(2)
[15 U.S.C. § 80b-6(1) and 80b-6(2)]
(Against Yang)

125. The Commission realleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

126. During the relevant time period, Defendant Yang acted as an investment adviser to Prestige within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

127. As more fully described in paragraphs 49 through 66 above, Defendant Yang, by use of the mails, and the means and instrumentalities of interstate commerce, directly or

indirectly, while acting as an investment adviser, knowingly, willfully, or recklessly: (a) employed devices, schemes, or artifices to defraud clients or prospective clients; and (b) engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon clients or prospective clients.

128. Defendant Yang acted with scienter.

129. By engaging in the conduct described above, Defendant Yang, directly or indirectly, violated, and unless enjoined will again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and 80b-6(2)].

COUNT V

**Violation of Shareholder Reporting Requirements
Violation of Exchange Act Section 13(d) and Rule 13d-1
[15 U.S.C. § 78m(d) and 17 C.F.R. § 240.13d-1]
(Against Yang)**

130. The Commission realleges and incorporates by reference paragraphs 1 through 94 as though fully set forth herein.

131. Section 13(d) of the Exchange Act and Rule 13d-1 thereunder require a person, group or entity that acquires beneficial ownership of more than 5% of a class of a registered equity security to file a statement, specifically, Schedule 13D, with the Commission.

132. The related Schedule 13D must disclose, among other things, the acquirer's identity, the purpose of the acquisition, the number of shares owned and the details of the acquirer's transactions in the stock during the previous sixty days.

133. By engaging in the conduct described in paragraphs 83 through 94 above, – *i.e.*, failing to disclose his personal trading in Zhongpin on Schedule 13D and falsely stating

in that form that Yang had not made transactions in Zhongpin stock during the previous sixty days – Defendant Yang, directly or indirectly, violated, and unless enjoined will again violate, Section 13(d) of the Exchange Act and Rule 13d-1 thereunder [15 U.S.C. § 78m(d) and 17 C.F.R. § 240.13d-1].

COUNT VI
Fraud – Misrepresentations in Schedule 13D
Violations of Exchange Act Section 10(b) and Rule 10b-5(b)
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5-(b)]
(Against Yang)

134. The Commission realleges and incorporates by reference paragraphs 1 through 94 as though fully set forth herein.

135. As more fully described in paragraphs 83 through 94 above, Defendant Yang made material false representations and omissions on Schedule 13D regarding his personal transactions in Zhongpin stock. Therefore, Defendant Yang, in connection with the purchase and sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, directly or indirectly made untrue statements of material fact or omitted to state materials facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

136. Defendant Yang acted with scienter.

137. By engaging in the conduct described above, Defendant Yang, directly or indirectly, violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (b) and (c)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that the Defendants committed the violations charged and alleged herein.

II.

Issue a Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants Prestige, Fan and Chang, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from, directly or indirectly, violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Issue a Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendant Yang, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from, directly or indirectly, violating Sections 10(b) and 13(d) of the Exchange Act [15 U.S.C. § 78j(b) and 78m(d)] and Rules 10b-5 and 13d-1 thereunder [17 C.F.R. § 240.10b-5 and 240.13d-1] and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and 80b-6(2)].

IV.

Issue an Order requiring each Defendant to disgorge all ill-gotten gains from the violative conduct alleged in this Complaint, and to pay prejudgment interest thereon.

V.

Issue an Order requiring Defendants Prestige, Fan and Chang to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] and requiring Defendant Yang to pay civil monetary penalties pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. § 78u(d)(3) and 78u-1] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Granting such other relief as this Court may deem just and appropriate.

JURY DEMAND

The Commission requests a trial by jury.

Respectfully Submitted,



Dated: February 6, 2013

Robert J. Burson (IL#3126909)
John E. Birkenheier (IL#
Timothy S. Leiman (IL#6270153)
Marlene B. Key-Patterson (IL#6296919)
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Attorneys for Plaintiff
U.S. Securities and Exchange
Commission

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**)
)
)
Plaintiff,)
)
)
vs.)
)
)
**SIMING YANG and PRESTIGE
TRADE INVESTMENTS LTD.,**)
)
)
Defendant.)

Case No. 12 C 2473

INSTRUCTIONS TO THE JURY

Date: January 13, 2014

Members of the jury, you have seen and heard all the evidence, and you are about to hear the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them. You must also continue to follow the instructions that I gave you at the start of the trial that you may not communicate about the case or about people involved in the case with anyone other than your fellow jurors until after you have returned your verdict.

Perform these duties fairly and impartially. Each party to the case is entitled to the same fair consideration. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, age, or sex.

Nothing I am saying now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence. Certain testimony was presented by the reading of depositions. You should give this testimony the same consideration that you would give it if the witnesses had appeared and testified in court.

In determining whether any fact has been proved, you should consider all of the evidence bearing on that fact, regardless of who offered the evidence.

You must make your decision based on what you recall of the evidence. You will not have a written transcript of the testimony to consult.

Certain things are not evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes anything you may have seen or heard in the press or on radio, television, or the Internet. None of this is evidence, and your verdict must not be influenced by it in any way.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

In addition, any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from it that another fact exists. In law we call this an "inference." You are allowed to make reasonable inferences, so long as they are based on the evidence in the case.

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any inconsistent statements or conduct by the witness.

You have heard a witness, Anthony Balzanto, who gave opinions about certain subjects. You do not have to accept this witness's testimony. You should judge it in the same you judge the testimony of any other witness. In deciding how much weight to give to this testimony, you should consider the witness's qualifications, how he reached his opinions, and the factors I have described for determining the believability of testimony.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You may find the testimony of one witness or a few witnesses to be more persuasive than the testimony of a larger number of witnesses. You need not accept the testimony of the larger number of witnesses.

The parties and the claims

The plaintiff in this case is the United States Securities and Exchange Commission, an agency of the federal government. I will refer to it as the "SEC." The defendants are Siming Yang and Prestige Trade Investments Limited, which I will refer to as "Prestige."

A corporation such as Prestige may act only through natural persons as its agents or employees. Agents or employees of a corporation may bind the corporation by their acts and statements made while acting within the scope of their authority delegated to them by the corporation, or within the scope of their duties as agents or employees of the corporation.

In this case, the SEC has made claims against Mr. Yang and Prestige concerning trading in stock and stock options in a company called Zhongpin, Inc. First, the SEC contends that Mr. Yang and Prestige made trades on the basis of significant inside information regarding Zhongpin and that they knew or recklessly disregarded that it was improper for them to have this information. Second, the SEC contends that Mr. Yang made personal trades in Zhongpin stock and options knowing that he was about to make large trades in Zhongpin stock on behalf of Prestige and thus attempted to profit personally from Prestige's trading. Third, the SEC contends that Mr. Yang filed a false disclosure form with the SEC regarding his trades in Zhongpin stock and options. Fourth, the SEC contends that Mr. Yang committed a fraud in connection with his filing of the disclosure form with the SEC.

Mr. Yang and Prestige deny the SEC's contentions. First, they contend that Mr. Yang's and Prestige's trades were based on research that Mr. Yang conducted

regarding Zhongpin, and not on improper inside information. Second, Mr. Yang contends that he made no personal trades in Zhongpin stock or options. Third, Mr. Yang contends that the disclosure form that he caused Prestige to file with the SEC was truthful.

The SEC has the burden of proving its claims by a preponderance of the evidence. When I say that the SEC has to prove something by a preponderance of the evidence, I mean that the SEC must prove that the particular proposition is more likely true than not true.

First claim – insider trading

The SEC's first claim is that Mr. Yang and Prestige engaged in what is sometimes called "insider trading" in connection with their purchases of stock and options in Zhongpin Inc. Mr. Yang and Prestige deny the SEC's claim. You must consider each defendant separately.

To prevail on this claim, the SEC must prove each of the following elements by a preponderance of the evidence as to the particular defendant you are considering:

1. The defendant knowingly received material, non-public information concerning the impending privatization of Zhongpin Inc.
2. The defendant knew that the information was obtained improperly, through breach of a duty that the source of the information had to maintain the confidentiality of the information.
3. The defendant knowingly used the information for his or its own benefit to trade in the stock or options of Zhongpin Inc.
4. The defendant's conduct was in connection with the purchase of a security.
5. The defendant used or caused the use of the mail, a telephone, another instrument of interstate commerce, or a national securities exchange in connection with the purchase.

I will provide definitions of a number of these terms in a moment.

Second claim – front running

The SEC's second claim is that Mr. Yang engaged in what is sometimes called "front running" in connection with his purchases of stock and options in Zhongpin Inc. for his own account. Mr. Yang denies the SEC's claim.

To prevail on this claim, the SEC must prove each of the following elements by a preponderance of the evidence:

1. While acting as an investment adviser to Prestige, Mr. Yang either: (a) employed a device, scheme, or artifice to defraud Prestige or its clients, or (b) engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon Prestige or its clients.
2. Mr. Yang acted knowingly.
3. Mr. Yang's conduct was in connection with the purchase of a security.
4. Mr. Yang used or caused the use of the mail, a telephone, another instrument of interstate commerce, or a national securities exchange in connection with the purchase.

For purposes of the first element, the following definitions apply.

Investment adviser: An investment adviser is someone who receives compensation for engaging in the business of advising others in purchasing or selling securities.

Employing a device, scheme or artifice to defraud or engaging in transactions, practices, or courses of business that operated as a fraud: This element requires that Mr. Yang knowingly purchased stock or options of Zhongpin for his personal account before purchasing Zhongpin stock for Prestige and that Mr. Yang did so to obtain a

personal financial benefit without disclosing to Prestige the purchases and the conflict of interest created by the purchases.

I will provide definitions of certain other terms used in this instruction in a moment.

Third claim – false SEC filing (1)

The SEC's third claim is that Mr. Yang filed a false disclosure form with the SEC called a "Schedule 13D." Mr. Yang denies the SEC's claim.

To prevail on this claim, the SEC must prove each of the following elements by a preponderance of the evidence:

1. Mr. Yang filed or caused someone else to file a Schedule 13D form with the SEC concerning Prestige's purchase of the stock of Zhongpin Inc.
2. The Schedule 13D form falsely stated that during the previous 60 days, no transactions in the common stock of Zhongpin Inc. had been effected by any "Reporting Person," a term that included Mr. Yang.
3. This false information was material. I will provide a definition of the term "material" in a moment.

Fourth claim – false SEC filing (2)

The SEC's fourth claim also concerns the Schedule 13D form. In this claim, the SEC alleges that Mr. Yang committed a fraud in connection with his filing of the Schedule 13D form. Mr. Yang denies the SEC's claim.

To prevail on this claim, the SEC must prove each of the following elements by a preponderance of the evidence:

1. Mr. Yang filed or caused someone else to file a Schedule 13D form with the SEC concerning Prestige's purchase of the stock of Zhongpin Inc.
2. The Schedule 13D form falsely stated that during the previous 60 days, no transactions in the common stock of Zhongpin Inc. had been effected by any "Reporting Person," a term that included Mr. Yang.
3. Mr. Yang knew that this statement was false.
4. Mr. Yang's actions occurred in connection with the purchase of a security.
5. Mr. Yang used or caused the use of the mail, a telephone, another instrument of interstate commerce, or a national securities exchange in connection with filing or causing the filing of the Schedule 13D form with the SEC.

I will provide definitions of a number of these terms in a moment.

Definitions

I will now define a number of the terms that I have used in the preceding instructions.

Material: Information is material if, under the circumstances, there is a substantial likelihood that a reasonable investor would view the disclosure of the information as significantly altering the total mix of available information regarding Zhongpin Inc.

Non-public: Information is non-public if it was, at the relevant time, not available to the investing public and had not been disclosed in a manner sufficient to ensure its availability to the investing public.

Know / Knowingly: A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, or if he acts with severe recklessness. A person acts with severe recklessness if he engages in highly unreasonable conduct that is an extreme departure from the standard of ordinary care, in that he knew of the risk or the risk was so obvious that he must have been aware of it.

To prove that a defendant acted knowingly or with severe recklessness, it is not enough to prove that the defendant acted negligently, mistakenly, or accidentally.

A person's state of mind may be inferred from his words, conduct, and acts, and from the surrounding circumstances.

In connection with: Conduct is considered to be in connection with the purchase of a security if there is some connection or relation between the conduct and the purchase of a security.

Use of mail / telephone / instrument of interstate commerce / national securities exchange: For Claims 1 and 2, this element requires the use of one of these means in some phase of the defendant's purchase of the security. For Claim 4, this element requires the use of one of these means in some phase of the defendant's filing of the Schedule 13D form with the SEC.

The use of the particular means need not be central to the defendant's conduct and may be entirely incidental to the defendant's conduct. The plaintiff is not required to prove that the defendant was directly or personally involved in the use of the particular means but must prove that the defendant knew or reasonably could foresee that his actions would naturally and probably result in the use of the mail, telephone, other instrument of interstate commerce, or a national securities exchange.

Final instructions

Once you are all in the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as by using a telephone, cell phone, smart phone, iPhone, Blackberry, an Android device, or a computer; by using text messaging, instant messaging, the Internet, chat rooms, blogs, websites, or services like Facebook, LinkedIn, GooglePlus, YouTube, Twitter; or by using any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the presiding juror or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer.

If you send me a message, do not include the breakdown of your votes. In other words, do not tell me that you are split 6-5, or 8-3, or whatever your vote happens to be.

A verdict form has been prepared for you. You will take this form with you to the jury room.

[Explain the verdict form.]

When you have reached unanimous agreement, your presiding juror will fill in and date the verdict form, and each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts.

VERDICT FORM

We, the jury, unanimously find as follows on the claims of the plaintiff, the Securities and Exchange Commission, against the defendants, Siming Yang and Prestige Trade Investments Limited:

First Claim (insider trading):

(Indicate the finding by marking "x" on the appropriate box for each defendant.)

<u>Name of defendant</u>	<u>For plaintiff</u>	<u>For defendant</u>
Siming Yang	_____	_____
Prestige Trade Investments Ltd.	_____	_____

Second claim (front running):

- _____ For plaintiff Securities and Exchange Commission
- _____ For defendant Siming Yang

Third claim (false SEC filing - 1):

- _____ For plaintiff Securities and Exchange Commission
- _____ For defendant Siming Yang

Fourth claim (false SEC filing - 2):

- _____ For plaintiff Securities and Exchange Commission
- _____ For defendant Siming Yang

Please sign and date this form on the next page.

Please sign and date this form below:

_____	_____
Presiding juror	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: January ____, 2014

Exhibit C

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1
Eastern Division**

U.S. Securities and Exchange Commission

Plaintiff,

v.

Case No.: 1:12-cv-02473

Honorable Matthew F. Kennelly

Siming Yang, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, January 13, 2014:

MINUTE entry before the Honorable Matthew F. Kennelly: Jury trial held. Jury reached a verdict. Jury returns a verdict in favor of defendants and against plaintiff for the first claim; in favor of plaintiff and against defendant for second claim; in favor of plaintiff and against defendant for third claim; and in favor of plaintiff and against defendant for fourth claim. Post trial motions are to be filed by 2/10/2014. Plaintiff's opening brief regarding appropriate relief shall be filed by 2/10/2014. Status hearing set for 2/12/2014 at 9:30 a.m. Mailed notice.(jpg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

Exhibit D

or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendants' agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(d) of the Exchange Act (15 U.S.C. § 78m(d)), and Rules 13d-1 (17 C.F.R. § 240.13d-1), and 13d-2 (17 C.F.R. § 240.13d-2) promulgated thereunder by:

- (a) after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in Exchange Act Rule 13d-1(i) (17 C.F.R. § 240.13d-1(i)), and becoming directly or indirectly the beneficial owner of more than five percent of such class;

- (b) failing promptly to file or cause to be filed with the Commission the disclosures required by Section 13(d) of the Exchange Act and Rule 13d-1 and 13d-2 thereunder.

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 206(1) and 206(2) of the Investment Advisers Act (the "Advisers Act") [15 U.S.C. § 80b-6(1) and 80b-6(2)] by using any means or instrumentality of interstate commerce, directly or indirectly

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 to the Securities and Exchange Commission pursuant to 15 U.S.C. § 78u(d)(3) and 15 U.S.C. § 80b-9(e). Defendant shall make this payment within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be

made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Siming Yang as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: May 27, 2014

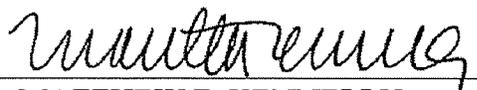

MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
SIMING YANG, et al.,)
)
Defendants.)

Case No. 12 C 2473

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

After a six-day trial, a jury found in favor of defendant Siming Yang on the SEC's claim of insider trading but in favor of the SEC against Yang on its claims of "front running" and filing false Schedule 13D forms with the SEC. The Court later denied Yang's motion for judgment as a matter of law or a new trial on the latter claims. In this order, the Court determines the appropriate remedies and the nature of the appropriate final judgment. This order assumes familiarity with the background of the case. See *SEC v. Yang*, No. 12 C 2473, 2014 WL 1303457 (N.D. Ill. Mar. 30, 2014) (decision denying Yang's post-trial motions); *SEC v. Yang*, ___ F. Supp. 2d ___, 2013 WL 6049074 (N.D. Ill. Nov. 14, 2013) (decision denying Yang's motion for summary judgment).

1. Permanent injunction

A permanent injunction is appropriate if the SEC shows a reasonable likelihood of future violations by the defendant. See *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir.

1982). In making this determination, a court considers all of the circumstances involving the defendant and the violations, including factors such as –

- the gravity of harm caused by the violations;
- the extent of the defendant's participation and his degree of scienter;
- whether the violations were isolated or recurrent;
- whether the defendant's usual business activities might involve him in such transactions in the future;
- the defendant's recognition of his culpability; and
- the sincerity of his assurances against future violations.

See id.

There was no significant harm to investors from Yang's violations. In the scheme of things, the Schedule 13D violations (which involved Yang's nondisclosure of his own stock purchases) were not terribly significant to the investing public given that Yang accurately disclosed on the forms the purchases of vastly greater amounts of stock by Prestige. And it is unlikely that Prestige experienced any quantifiable harm from Yang's front-running. The market was harmed in the sense that Yang traded based on information (regarding Prestige's impending large purchases) to which only he had access, but the degree of harm was not great due to Yang's limited purchases.

Yang fought and continues to fight the SEC's claims, but in the Court's view, he should not be penalized for this. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1229 (D.C. Cir. 1989). In this regard, it is important to keep in mind that Yang prevailed on the SEC's insider trading claim, which was the centerpiece of the case. That claim was the primary focus of the dispute prior to and during the trial.

On the other hand, Yang was shown to have the level of scienter required to prove the violations, and he was the sole participant (at least the sole direct participant). These factors tilt in favor of imposition of an injunction.

The SEC also contends, and the Court agrees, that Yang has engaged in further misconduct following the conclusion of the trial. First of all, as the Court previously found, Yang participated in a transaction with Prestige that resulted in the denial of compensation that he had coming to him, in a way that ran afoul of the stipulated asset freeze order that the Court entered. This had both the purpose and anticipated effect of making it difficult if not impossible for the SEC to collect any disgorgement or civil penalties that the Court ordered. The Court took steps necessary to prevent Yang and Prestige from effectuating this transaction, but what is significant here is the intent to evade legal sanctions and the rather obvious implication this has regarding the likelihood of future violations.

Second, the SEC has shown that Yang engaged in further trading via a separate account (at Fidelity) in May 2013, while the litigation was under way, that he did not disclose in responses or amended responses to interrogatories from the SEC that sought disclosure of his brokerage accounts. Yang says that he opened this account and conducted the trading after the close of discovery, but the applicable rules quite clearly required him to supplement his interrogatory responses when they became incorrect, and the fact that discovery had closed did not absolve him of that responsibility. See Fed. R. Civ. P. 26(e)(1). The trading also likely violated the stipulated asset freeze order, which (contrary to Yang's suggestion) was not limited to the accounts in which he had conducted the Prestige trading. Yang also made a profit

trading in the Fidelity account, purchasing 23,000 shares of a company just before it announced it was going private and selling the shares at a significantly higher price just a few days later, just after the company made the announcement. See Pl.'s Reply, Exs. C & D. This suggests, if nothing else, an ongoing intention to trade on U.S. markets, despite Yang's protestations to the contrary.

Were it not for these post-lawsuit incidents, the Court might be inclined not to impose an injunction against Yang; his violations of the securities laws were non-recurrent and were limited to a brief period of time in 2013. But these incidents and the other injunction-favoring factors noted above indicate a reasonable likelihood of future violations, making an injunction appropriate.

2. Disgorgement

The Court declines to order disgorgement in this case. The purpose of disgorgement is to prevent unjust enrichment. See, e.g., *SEC v. Commonwealth Chem. Secs., Inc.*, 574 F.2d 90, 95, 102 (2d Cir. 1978); *SEC v. McDonald*, 699 F.2d 47, 54 (1st Cir. 1983). Yang was not, in fact, enriched by the trading that constituted front-running. He purchased Zhongpin options but then let them expire; he bought some Zhongpin stock and sold it at a loss; and he did not sell even more Zhongpin stock that he had purchased. See Pl.'s Motion for Remedies, Ex. 1 (Kustusch Affid.) ¶¶ 10.

The SEC says, and Yang does not dispute, that if one calculates the value of the stock and options as of a relevant date, March 23, 2012, Yang had unrealized gains with a net total of about \$151,000. The SEC also argues, and the Court acknowledges that it has the authority to order "disgorgement" of paper "profits" that existed at one time but were not realized. According to the SEC, the lack of profit was a matter of

choice on Yang's part, and he should not get the benefit of that choice for purposes of disgorgement.

The fact of the matter, however, is that even assuming Yang could have made a lot of money if he had sold his stock and options at the opportune time, he chose not to do so, and as a result he made no profits. In the Court's view, it would turn the purpose of disgorgement on its head to require Yang to "give up" profit that he elected not to take.

3. Civil penalties

The Securities Exchange Act and the Investment Advisers Act both authorize imposition of civil penalties for violations of those statutes. See 15 U.S.C. §§ 78u(d)(3) & 80b-9(e). The purpose of these civil penalties is to provide a financial disincentive to violate the securities laws over and above the remedy of disgorgement, which simply involves requiring the violator to give back his profits. See, e.g., *SEC v. Moran*, 944 F. Supp. 296 (S.D.N.Y. 1996).

Both statutes provide for three levels (called "tiers") of penalties based on the nature of the violation. The first tier is the base level and provides for a maximum penalty of \$7,500 for an individual (higher for an entity) for the period at issue here. The second tier applies where the violation involves "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and provides for a maximum of \$75,000 for an individual. The third tier applies when the requirements for the second tier are met and the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons"; it provides for

a maximum of \$150,000 for an individual. See *id.* §§ 78u(d)(3)(B)(i-iii) & 80b9(e)(2)(A-C); 17 C.F.R. §§ 201.1004 – 2011005 & Subpart E, Table IV.

The SEC argues that "the jury found that Yang's false 13D filings violated two free-standing statutory provisions: (1) the antifraud provisions of the Exchange Act, Section 10(b); and (2) the disclosure requirements of Exchange Act Section 13(d)" and that "[f]or each statute, there were two violations—one for each of the false Schedules 13D" Pl.'s Mot. for Remedies at 11. The SEC therefore seeks for these violations a civil penalty of four times the maximum tier two penalty of \$75,000, for a total of \$300,000. For the front-running claim, the SEC seeks a civil penalty totaling \$450,000, "an amount equal to a third tier penalty for three violations." *Id.* at 12. It proposes to group Yang's personal trades in Zhongpin stock and options into three groups for this purpose: his purchase of stock on March 14; his purchase of call options on March 14; and his purchase of call options on March 15. *Id.*

The SEC's proposed breakdown of the front-running claim is artificial and arguably at odds with the jury's findings, because the jury was asked to find only a *violation*, not separate violations. The Court finds it appropriate to maintain that breakdown in determining the appropriate civil penalties.

The Court likewise disagrees with the SEC's proposed breakdown of the Schedule 13D violations. The jury was asked to make two separate findings regarding the Schedule 13D forms, but these were essentially alternative theories for the same wrongdoing (a fraud theory and a false disclosure theory). The Court can find no appropriate basis to treat these as separate violations for the purpose of civil penalties. The Court likewise declines to order separate penalties for the original Schedule 13D

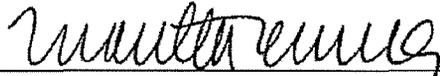
that Yang filed and the amended one he filed later the same day. Among other things, the jury was not asked to find that Yang filed two false Schedule 13D forms; the jury instructions were worded in the singular.

Both sides agree that the Schedule 13D violation is appropriately treated as a tier two violation. They dispute how the front-running violation should be treated. The Court agrees with Yang that this violation is likewise appropriately treated as a tier two violation. In particular, the tier three requirement of "substantial losses or . . . a significant risk of substantial losses" is missing in this case.

The Court finds that, particularly in view of the absence of disgorgement and the Court's decision to treat the violations as singular rather than plural in nature, a penalty for each at the statutory maximum is appropriate. The Court imposes upon Yang a civil penalty of \$75,000 for the front-running violation and \$75,000 for the Schedule 13D violation, for a total of \$150,000.

Conclusion

For the reasons stated above, the Court directs the Clerk to enter judgment in favor of plaintiff and against defendant Siming Yang, imposing civil penalties in the amount of \$150,000 as well as a permanent injunction. A separate judgment order embodying these terms will be entered.


MATTHEW F. KENNELLY
United States District Judge

Date: May 27, 2014

Exhibit F

Company No.: 1691631

PRESTIGE TRADE INVESTMENTS LIMITED
名貿投資有限公司
(Incorporated in British Virgin Islands with limited liabilities)
(the "Company")

**WRITING RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY
PURSUANT TO THE 2013 SHARE HOLDER SPECIAL MEETING VOTE RESULT**

NO PAYMENT OF MANAGEMENT FEE AND BONUS TO THE INVESTMENT MANAGER

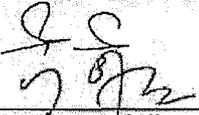
WE, the undersigned, being the members of the Board of Directors of the Company for the time being entitled to receive notice of and to attend and vote for the 2013 Share Holder Special Meeting of the Company, **RESOLVED THAT:-**

The investment manager Siming Yang shall not receive the Company's payment of management fee (salaries) and bonus for year 2012, 2013 and thereafter until the Company dissolves.

It is **FURTHER RESOLVED THAT:-**

All the terms and conditions related to management fee (salaries) and bonus as set forth in the Service Contract between the investment manager and the Company and the Share Holder Agreement of the Company should be superseded by this resolution.

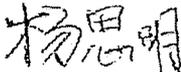
Dated: **03/27/2013**



XIAO FEI 蕭菲
Chairperson and Director



WANG CHIDONG 王焯东
Director



YANG SIMING 楊思明
Director and General Manager

公司编号: 1691631

PRESTIGE TRADE INVESTMENTS LIMITED

名貿投資有限公司
(英屬維京群島有限責任公司)
("公司")

依据 2013 年特别股东会议投票决定而定的书面董事会决议

不予支付投资经理管理费用和奖金

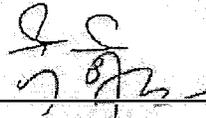
我们, 以下签署人, 乃公司董事会董事, 有权接受通知并参与并投票第 2013 年特别股东大会, 特此决议:-

投资经理杨思明不予发放 2012 年、2013 年及未来的管理费(工资)和奖金, 直到公司解散为止。

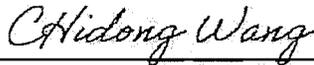
进一步决议:-

投资经理和公司签署的服务合同及公司股东签署的股东协议中有关管理费(工资)及奖金的所有条款作废并由此决议取代。

日期: 03/27/2013



XIAO FEI 萧菲
董事长/董事



WANG CHIDONG 王焯东
董事



YANG SIMING 杨思明
董事/投资经理

Exhibit G

About You About Your Account **Review & Confirm** Fund Next Steps

This is a secure transaction.

Review and Confirm

Please review each section carefully and make changes using the appropriate links.

Questions?
800-343-3548

Instant message a representative.

Account Information { Add a Joint Account Holder

Registration Brokerage - The Fidelity Account Individual

Personal Information

Primary Account Holder Siming Yang

Contact

Country of Citizenship CHINA

Country of Tax Residence CHINA

Legal/Residential Address 606 West 116 Street, Apt 3
New York, NY 10027

Mailing Address 806 West 116 Street, Apt 3
New York, NY 10027

Trades per Year (optional) 120+ times per year

Employment Information { Edit

Employment Status Not Currently Employed

Investment Industry Associations No

Corporate Control Status No

Account Settings { Edit

Core Position Taxable, Interest-Bearing Account
Your core position is where your money is held until you invest it.

If you would like to change your core position or view available alternatives, you can do that now or after your account is opened. Click on edit to see alternatives.

Electronic Funds Transfer Enrolled
Electronic Funds Transfer (EFT) allows you to link your bank account to your account and easily move money once the account is set up.

021000089 (Bank Routing Number)
(Checking Account Number)
Driver's License)
New York (State of Issue)

eDelivery Enrolled
eDelivery gives you the option to receive certain account communications by email. The communications listed below will be sent to you in email. You can change your eDelivery preferences now or after your account is opened.

- * Account Statements
- * Trade Confirmations and Related Prospectuses
- * Tax Forms and Related Disclosures
- * Prospectuses, Shareholder Reports and Other Documents

Save & Finish Later



Confirm My Information



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All rights reserved.
Terms of Use | Privacy | Security

▼ About You > ▼ About Your Account > **Review & Confirm** > Firms > Next Steps

🔒 This is a secure transaction.

Agree to Terms

Questions?
800-343-3548

Instant message a representative.

1. Open the Customer Agreement and review the Terms & Conditions

Open, read, and print the following document: [Customer Agreement \(PDF\)](#)

Please scroll through for important information related to your account: [Print for your records](#)

TABLE OF CONTENTS

- [Terms & Conditions](#)
- [Householding of Shareholder Documents](#)
- [Electronic Delivery Agreement](#)
- [Important Information about Electronic Funds Transfer \(EFT\)](#)

Terms & Conditions

You acknowledge and agree to the following terms and conditions.

To retain these documents, open the [Customer Agreement \(PDF\)](#) or click the links and print the document. If you are unable to view or access any of these documents, please exit this application. You may obtain paper copies of this application or any of these documents listed above at no charge by calling 800-544-6666.

2. Certify your taxpayer identification number

Under penalties of perjury, you certify that:

- a. The Social Security number or taxpayer identification number you have provided is correct (or you are waiting for a number to be issued to you); and
- b. You are a U.S. citizen or other U.S. person as defined in the instructions to IRS form W-9, including a U.S. resident alien; and
- c. Unless you have checked the box immediately below these certifications, you are not subject to backup withholding because
 - you are exempt from backup withholding, or
 - you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of failure to report all interest or dividends; or
 - the IRS has notified you that you are no longer subject to backup withholding.

You must check this box if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

3. Check the box below, then click "Agree & Open Account"

By checking here, you acknowledge that you are the person named in this account application, and you have been provided with, have read and understood, and agree to be bound by all the terms and conditions set forth in this application in step 1 as they are currently in effect and as they may be amended in the future, including but not limited to the [Fidelity Account® Customer Agreement](#), [consent to Householding of Shareholder Documents](#), [Electronic Delivery Terms of Agreement](#), [Fidelity Electronic Funds Transfer Disclosures](#) and other documents. This acknowledgment applies only to this new account application process and delivery of the documents specified above.

Click "Agree & Open Account" to sign this electronic application, submit your information and open your account.

This account is governed by a new dispute arbitration clause which is part of the

THIS ACCOUNT IS GOVERNED BY A PRE-DISPUTE ARBITRATION AGREEMENT WHICH IS PART OF THE Fidelity Customer Agreement and which is accessible by clicking on the preceding underlined link. I acknowledge receipt of the pre-dispute arbitration clause.

The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Save & Finish Later

Agree & Open Account

05/07/2013 23:26:48 PM 395706



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Terms of Use, Privacy & Security

[About You](#) > [About Your Account](#) > [Review & Confirm](#) > **Fund** > [Next Steps](#) This is a secure session.

Your account is ready to fund

Your Fidelity Account Number is **X73888476**.

Please print this page or write this number down.

Set up a **PASSWORD** to access all the great online tools and services available to you.

Fund your account(s) to start working on your investment goals

Continue

Questions?
800-343-3548
 Instant message a representative.

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**Approved via Batch
RICHARD SWINDELL, A451758, 5/8/2013**

Margin Application

Page : 1 2 3 4 5

Review your application

- Verify your information on this application.
- After you verify this information, we suggest you print a copy of this account application for your records.
- Your application will not be submitted until you click the 'I Agree' button below.

Print

Account Information

Account

Owners: SIMING YANG

Employment Information

Employment Status: NOT EMPLOYED
 Income Source: Personal investments
 Affiliations: No
 Stock exchange or member firm
 Company director, 10% shareholder, or policy maker: No

Financial Information

Primary Account Owner
 Annual Income: Over \$100,000
 Estimated Net Worth: Over \$500,000
 Estimated Liquid Net Worth: Over \$500,000
 Federal Tax Bracket: 15% or less

You ("You" refers to all account owners) hereby request Fidelity Brokerage Services LLC, Member NYSE, SIPC, and National Financial Services LLC, Member NYSE, SIPC (collectively "Fidelity") to open the Margin Account in the name(s) listed as account owners on this online application.

In order to complete this application and receive all necessary documentation, you will need to have a personal computer with internet access, an internet browser that is Javascript enabled, the ability to read pop-up boxes.

Checking here and clicking on the "I Agree" button below signifies that you and each owner, custodian or fiduciary on this account agree to receive, acknowledge that you have read, understood and agree to be bound by the current terms and conditions of the following document, and as may be amended from time to time, in electronic format (which will appear in pop-up boxes):

- [Margin Account Agreement \(PDF\)](#)

Please verify that you are able to view this document now by

FIMS_RETAIL:1149011193

clicking the link above. If you are unable to access or view this document please exit this application. You may obtain paper copies of this application or the document listed above at no charge by calling 800-544-6666.

This consent applies only to this account application and delivery of legal document listed above. To retain this application or this document, you can print them using the print function on your browser, or save them to your hard drive using the save function. Electronic delivery is provided free of charge from Fidelity, however other online service provider charges may apply. You may update/change your e-mail address any time at the "Your Profile" section of Fidelity.com.

To Fidelity Brokerage Services LLC and National Financial Services LLC: You are hereby authorized to lend, hypothecate or re-hypothecate separately, or with the property of others, either to yourselves or to others, any property you may be carrying for me on margin. This authorization applies to all my accounts you carry and shall remain in force until you receive notice of revocations from me.

By Clicking "I Agree" below you also authorize Fidelity to lend, hypothecate or re-hypothecate separately, or with the property of others or to others, any property Fidelity may be carrying for you on margin. This authorization applies to all your accounts Fidelity carries and shall remain in force until Fidelity receives notice of revocation from you.

Click I Agree to sign this electronic application, to acknowledge and agree to the above, to submit your information to Fidelity and to open your account.

This account is governed by a predispute arbitration clause which is located on the last page of the margin account agreement and which is accessible by clicking on the preceding underlined link. I acknowledge receipt of the predispute arbitration clause.

Previous	I Agree
----------	---------

**Margin approved
STEVEN SCHMALZRIED, A200346, 5/8/2013**

Margin Application and Options Trading Agreement

Page : 1 2 3 4 5 6 7 8 9

Review your application

- Verify your information on this application.
- After you verify this information, we suggest you print a copy of this account application for your records.
- Your application will not be submitted until you click the 'I Agree' button below.

Print

Account Information	
Account	[REDACTED]
Owners	SIMING YANG
Personal Information	
Date of Birth	08/04/1976
Marital Status	Single
Number Of Dependants	0
Employment Information	
Employment Status	NOT EMPLOYED
Income Source	Personal investments
Affiliations: Stock exchange or member firm	No
Company director, 10% shareholder, or policy maker	No
Financial Information	
Primary Account Owner	
Annual Income	Over \$100,000
Estimated Net Worth	Over \$500,000
Estimated Liquid Net Worth	Over \$500,000
Federal Tax Bracket	15% or less
Investment Objective	Most Aggressive
Experience (years) with	
Stocks	10
Equity Options	10
Commodities	10
Bonds	0
Index options	10
Options frequency	100 (Per Month)
Options size	20,000
Current account with	

Option Level	Interest	Experience
Covered call writing of equity options	Yes	Extensive
Purchase of Calls/Puts	Yes	Extensive
Equity spreads and covered Put Writing	Yes	Moderate
Uncovered writing of Equity Options	Yes	Moderate
Uncovered writing of Index Options	Yes	Moderate

You ("You" refers to all account owners) hereby request Fidelity Brokerage Services LLC, Member NYSE, SIPC, and National Financial Services LLC, Member NYSE, SIPC (collectively "Fidelity") to open the Margin Account and Options Trading Account in the name(s) listed as account owners on this online application.

In order to complete this application and receive all necessary documentation, you will need to have a personal computer with internet access, an internet browser that is Javascript enabled, the ability to read pop-up boxes, and Adobe Reader software which will enable you to access documents in Portable Document Format (PDF), available free from [Adobe's Web Site](#).

Checking here and clicking on the "I Agree" button below signifies that you and each owner, custodian or fiduciary on this account agree to receive, acknowledge that you have read, understood and agree to be bound by the current terms and conditions of the following document, and as may be amended from time to time, in electronic format (which will appear in PDF pop-up box):

- [Margin and Option Account Agreement \(PDF\)](#)

Please verify that you are able to view this document now by clicking the link above. If you are unable to access or view this document please exit this application. You may obtain paper copies of this application or the document listed above at no charge by calling 800-544-6666.

This consent applies only to this account application and delivery of legal document listed above. To retain this application or this document, you can print them using the print function on your browser, or save them to your hard drive using the save function. Electronic delivery is provided free of charge from Fidelity, however other online service provider charges may apply. You may update/change your e-mail address any time at the "Your Profile" section of Fidelity.com.

By Clicking "I Agree" below you also authorize Fidelity to lend, hypothecate or re-hypothecate separately, or with the property of others or to others, any property Fidelity may be carrying for you on margin. This authorization applies to all your accounts Fidelity carries and shall remain in force until Fidelity receives notice of revocation from you.

Click I Agree to sign this electronic application, to acknowledge and agree to the above, to submit your information to Fidelity and to open your account.

This account is governed by a [predispute arbitration clause](#) which

is located on the last page of the margin account agreement and options account agreement and which is accessible by clicking on the preceding underlined link. I acknowledge receipt of the predispute arbitration clause.

[Previous](#) [I Agree](#)

**Margin approved, Options level E approved
STEVEN SCHMALZRIED, A200346, 5/8/2013**



Investment Report

May 7, 2013 - May 31, 2013

Online Fidelity.com
 FAST(sm)-Automated Telephone 800-544-5555
 Customer Service 800-544-6666

Envelope 903100901



SIMING YANG



Fidelity Account sm SIMING YANG - INDIVIDUAL

Account Summary

Beginning mkt value as of May 7	\$0.00
Additions	90,000.00
Federal Tax Withheld	-120,917.65
Transaction costs, loads and fees	-167.36
Margin interest paid	-41.29
Change in investment value	42,133.35
Change in short balance	24,662.34
Ending mkt value as of May 31	35,669.39
Short balance	-24,662.34
Ending Net Value	\$11,007.05

Income Summary

	This Period	Year to Date
Taxable		
Interest	\$0.11	\$0.11

Realized Gain/Loss from Sales

	This Period	Year to Date
Short-term gain	\$44,201.47	\$44,201.47
Short-term loss	-2.01	-2.01
St disallowed loss	2.01	2.01
Net short	44,201.47	44,201.47

Account trades from Jun 2012 - May 2013 34

Holdings (Symbol) as of May 31, 2013

Core Account 100% of holdings

	Quantity May 31, 2013	Price per Unit May 31, 2013	Total Value May 7, 2013	Total Value May 31, 2013
CASH	35,669.390	\$1.000		\$35,669.39
<i>For balances between \$25,000.00 and \$49,999.99, the current interest rate is 00.01%.</i>				
Short balance			0.00	-24,662.34



Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account SM [REDACTED] SIMING YANG - INDIVIDUAL

Transaction Details (for holdings with activity this period)

Core Account - Cash

Description	Amount	Balance	Description	Amount	Balance
Beginning		\$0.00	Margin interest	-41.29	
<i>Investment Activity</i>			Subtotal of Investment Activity	- \$78,992.95	
Securities bought	-\$389,882.76		<i>Cash Management Activity</i>		
Securities sold	431,848.64		Deposits	90,000.00	
Other disbursements	-120,917.65		Subtotal of Cash Management Activity	\$90,000.00	
Core account income	0.11		Ending		\$11,007.05

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Transaction Amount
5/13	PACTERA TECHNOLOGY	You bought	4,000.000	\$5.12000		-\$20,487.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,000.000	5.12000		-10,247.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,000.000	5.12000		-10,247.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,000.000	5.12000		-10,247.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,000.000	5.15000		-10,307.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,500.000	5.13000		-12,832.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				
5/14	PACTERA TECHNOLOGY	You bought	2,500.000	5.13000		-12,832.95
	INTL LTD SPON ADR EA REPR 1 ORD	Transaction cost: -\$7.95				



Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] SIMING YANG - INDIVIDUAL Transaction Details

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Transaction Amount
5/14	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	3,000.000	5.13000		-15,397.95
5/14	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	3,000.000	5.14000		-15,427.95
5/14	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD AUTO JOURNAL 1 TO 2 X73-888476-1 VALUE OF TRANSACTION \$20,640.00	Journalaed	4,000.000	5.16000		0.00
5/14	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD AUTO JOURNAL 1 TO 2 X73-888476-2 VALUE OF TRANSACTION \$20,640.00	Journalaed	-4,000.000	5.16000		0.00
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$1.86 <i>Short-term gain: \$19,831.17</i>	-12,300.000	6.75000	\$63,191.97f	83,023.14
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$1.26 <i>Short-term gain: \$13,642.93</i>	-8,300.000	6.77000	42,546.81f	56,189.74
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$8.21 <i>Short-term gain: \$2,801.91</i>	-1,700.000	6.77500	8,707.38f	11,509.29
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$8.06	-700.000	6.75500	3,585.39f	4,720.44
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld <i>Short-term gain: \$1,135.05</i>				-1,321.72



Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] **SIMING YANG - INDIVIDUAL**
Transaction Details
Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Transaction Amount
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-3,222.60
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-15,733.13
5/24	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-23,246.48
5/29	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	5,000.000	6.58000		-32,907.95
5/29	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	5,000.000	6.60000		-33,007.95
5/29	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	8,000.000	6.50000		-52,007.95
5/29	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You bought Transaction cost: -\$7.95	10,000.000	6.55000		-65,507.95
5/31	CASH INTEREST RECEIVED	Non-resident tax				-0.03
5/31	CASH	Interest earned				0.11
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$9.12 <i>Short-term gain: \$1,582.93</i>	-10,000.000	6.71000	65,507.95 ^f	67,090.88
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$0.78 <i>Short-term gain: \$1,379.32</i>	-6,600.000	6.71010	42,906.56 ^f	44,285.88
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$8.59 <i>Short-term gain: \$718.20</i>	-5,400.000	6.71010	35,507.75 ^f	36,225.95

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Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] SIMING YANG - INDIVIDUAL Transaction Details

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Transaction Amount
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$8.34 <i>Short-term gain: \$395.41</i>	-3,300.000	6.71000	21,739.25 ^f	22,134.66
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$0.31 <i>Short-term gain: \$333.56</i>	-2,600.000	6.71000	17,112.13 ^f	17,445.69
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	You sold Transaction cost: -\$0.02 <i>Short-term gain: \$13.32</i>	-100.000	6.71500	658.16 ^f	671.48
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-188.01
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-4,884.79
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-6,197.70
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-10,143.27
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-12,400.05
5/31	PACTERA TECHNOLOGY INTL LTD SPON ADR EA REPR 1 ORD	Tax withheld				-18,785.45

^f - FIFO (First-In, First-Out)

Cost basis and gain/loss information is provided as a service to our customers and is based on standards for filing US Federal Tax Returns as determined by Fidelity. This information is not intended to address tax law or reporting requirements applicable in your country of tax residence.



Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] SIMING YANG - INDIVIDUAL

Short Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Proceeds of Sale	Transaction Amount
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought	100.000	\$29.46000	2,951.95f	-\$ 2,946.00
		<i>Short-term loss: \$2.01</i>				
		<i>Short-term disallowed loss: \$2.01</i>				
		<i>Wash sale of 5/28/13: \$2.01</i>				
		<i>Short-term gain: \$5.95</i>				
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought	100.000	29.46000		- 2,946.00
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought	101.000	29.49000	2,981.47f	- 2,978.49
		<i>Short-term gain: \$2.98</i>				
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought	199.000	29.47000	5,874.38f	- 5,864.53
		<i>Short-term gain: \$9.85</i>				
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought	1,200.000	29.47120	35,423.38f	- 35,365.44
		<i>Short-term gain: \$57.94</i>				
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER	You bought Transaction cost: -\$7.95	1,300.000	29.47000	38,374.31f	- 38,318.95
		<i>Short-term gain: \$55.36</i>				

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Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account SM [REDACTED] SIMING YANG - INDIVIDUAL Transaction Details

Short Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Proceeds of Sale	Transaction Amount
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Short sale Transaction cost: -\$1.44	-2,800.000	29.52000		82,654.56
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Short sale Transaction cost: -\$0.06	-100.000	29.53000		2,952.94
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Short sale Transaction cost: -\$8.01	-100.000	29.52000		2,943.99
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Tax withheld				- 824.32
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Tax withheld				- 826.82
5/31	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE	Tax withheld				- 23,143.28

f- FIFO (First-In, First-Out)

Margin Activity as of May 31, 2013

Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid	Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid
04/22-05/20	28,031	7.575%	28,031	-\$41.29	Total year to date				\$0.00
Total this period				-\$41.29					

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Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] SIMING YANG - INDIVIDUAL

Trades Pending Settlement on May 31, 2013

Trade Date	Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Settlement Amount
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	100.000	\$29.73000	-\$3,018.36f	-\$2,980.95
			<i>Short-term gain: \$37.41</i>				
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	400.000	29.82000	-12,073.42f	-11,928.00
			<i>Short-term gain: \$145.42</i>				
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	1,000.000	29.78770	-30,233.61f	-29,787.70
			<i>Short-term gain: \$445.91</i>				
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-500.000	30.20000		15,091.78
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-500.000	30.25000		15,116.78
5/ 30	6/ 04	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-500.000	30.25010		15,116.83
5/ 31	6/ 05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	100.000	30.05000	-3,063.97f	-3,005.00
			<i>Short-term gain: \$58.97</i>				
5/ 31	6/ 05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	200.000	30.06000	-6,167.84f	-6,019.95
			<i>Short-term gain: \$147.89</i>				
5/ 31	6/ 05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	106.000	30.07000	-3,254.51f	-3,187.42
			<i>Short-term gain: \$67.09</i>				
5/ 31	6/ 05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	300.000	30.08000	-9,286.97f	-9,024.00
			<i>Short-term gain: \$262.97</i>				



Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] **SIMING YANG - INDIVIDUAL**
Transaction Details

Trades Pending Settlement on May 31, 2013

Trade Date	Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Settlement Amount
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	103.000	30.11000	-3,162.40f	-3,101.33
			<i>Short-term gain: \$61.07</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	300.000	30.18000	-9,289.97f	-9,054.00
			<i>Short-term gain: \$235.97</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	400.000	30.19000	-12,274.35f	-12,076.00
			<i>Short-term gain: \$198.35</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	100.000	30.23000	-3,063.97f	-3,023.00
			<i>Short-term gain: \$40.97</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	800.000	30.24000	-24,317.45f	-24,192.00
			<i>Short-term gain: \$125.45</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT COVER (VIPS)	Bought	1,791.000	30.19360	-54,484.86f	-54,076.74
			<i>Short-term gain: \$408.12</i>				
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-1,000.000	30.38010		30,371.62
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-1,000.000	30.39000		30,381.52
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-500.000	30.44000		15,211.78
5/31	6/05	VIPSHOP HLDGS LTD SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)	Sold short	-300.000	30.68010		9,195.91

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Investment Report

May 7, 2013 - May 31, 2013

Fidelity Account sm [REDACTED] **SIMING YANG - INDIVIDUAL**
Transaction Details

Trades Pending Settlement on May 31, 2013

Trade Date	Settlement Date	Security	Description	Quantity	Price per Unit	Cost Basis of Close	Settlement Amount
5/31	6/05	VIPSHOP HLDGS LTD	Sold short	-200.000	30.68000		6,127.93
		SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)					
5/31	6/05	VIPSHOP HLDGS LTD	Sold short	-300.000	30.73000		9,210.88
		SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)					
5/31	6/05	VIPSHOP HLDGS LTD	Sold short	-300.000	30.98000		9,285.87
		SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)					
5/31	6/05	VIPSHOP HLDGS LTD	Sold short	-300.000	30.99000		9,288.88
		SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)					
5/31	6/05	VIPSHOP HLDGS LTD	Sold short	-300.000	31.00000		9,291.88
		SPON ADR EA REPR 2 ORD SHS USD0.0001 SHORT SALE (VIPS)					

f- FIFO (First-In, First-Out)

Cash Management Activity

Deposits (3)

Date	Description	Amount	Date	Description	Amount
5/9	DEPOSIT RECEIVED	\$40,000.00	5/10	MONEY LINE RECEIVED	25,000.00
5/9	MONEY LINE RECEIVED	25,000.00	Total		\$90,000.00

Daily Additions and Subtractions Cash @ \$1 per share (the following is provided to you in accordance with industry regulations)

Date	Amount	Balance	Date	Amount	Balance
5/09	\$65,000.00	\$65,000.00	5/14	-69,512.05	0.00
5/10	25,000.00	90,000.00	5/24	18,417.97	18,417.97
5/13	-20,487.95	69,512.05	5/29	-18,417.97	0.00



Investment Report

May 7, 2013 - May 31, 2013

Additional Information and Endnotes

Although Fidelity reports certain cost basis and holding period information to you and to the IRS on your annual Form 1099-B, Fidelity-provided estimated cost basis, gain/loss, and holding period information may not reflect all adjustments necessary for tax reporting purposes. Taxpayers should verify such information against their own records when calculating reportable gain or loss resulting from a sale, redemption or exchange. Amortization, accretion and similar adjustments to cost basis are provided for many fixed income securities (and some bond-like equities), however, they are not provided for certain fixed income securities, such as short-term instruments, Unit Investment Trusts, foreign fixed income securities, or those that are subject to early prepayment of principal (pay downs).

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Information About Your Fidelity Statement

For TDD Service for the Hearing-Impaired, call 800-544-0118, 9 am - 9 pm ET, 7 days a week. Lost or Stolen Cards For 24 Hour worldwide customer service, call 800-529-2164 for American Express or 800-323-5353 for VISA® Gold Check Card.

Additional Investments with Fidelity Make checks payable to Fidelity Investments and include your account number. For retirement and health savings accounts (HSA), designate in the memo field whether your contribution is for the current or prior year. Mail to: Fidelity Investments, P.O. Box 770001, Cincinnati, OH 45277-0003.

Income Summary Shows income by tax status for the statement and year-to-date periods. Except for interest income earned on, or distributed by, tax-exempt securities, Fidelity reports dividends and capital gains held in taxable accounts as taxable income. A portion of income reported as tax-exempt income may be subject to alternative minimum taxes and/or state and local taxes. In Traditional IRAs, Rollover IRAs, SEP-IRAs, SIMPLE IRAs and Keoghs, earnings are reported as tax-deferred income. In Roth IRAs and HSAs, earnings are reported as tax-exempt income as they may be federally tax-exempt if certain conditions are met.

Change in Investment Value The appreciation or depreciation of your holdings due to price changes, plus any distributions and income earned during the statement period, less any transaction costs, sales charges, or fees. **Cost Basis, Gain/Loss, and Holding Period Information** Cost basis is the original amount paid to purchase a security, including the amount of reinvested dividends and capital gains. Generally, we adjust cost basis for events such as returns of capital (including dividend reclassifications) and disallowed losses on wash sales on identical securities within the same account. NFS is required to report certain cost basis and holding period information to the IRS on Form 1099-B. However, cost basis, realized gain and loss, and holding period information may not reflect adjustments required for your tax reporting purposes. Fidelity and NFS specifically disclaim any liability arising out of a customer's use of, or any tax position taken in reliance upon, such information. Unless otherwise specified, NFS determines cost basis at the time of sale using its default methods of average cost for open-end mutual funds (except ETFs) and first-in, first-out (FIFO) for all other securities (including ETFs and shares held in dividend reinvestment plans). Customers should consult their tax advisors for further information.

Cost Fidelity provides purchase cost information for securities held in retirement and HSA accounts. Such information may be adjusted for certain transactions and does not reflect dividends or capital gains reinvestments. Fidelity reports transaction profit or loss information when securities are sold within a retirement or HSA account. Transaction profit or loss is calculated by subtracting purchase cost from sales proceeds using the FIFO method if shares were purchased at different times or prices.

Additional Information About Your Brokerage Account, if Applicable

Customer Free Credit Balance You are entitled to free credit balances in your brokerage account, subject to open commitments of your cash accounts. Free credit balances are not segregated and may be used in NFS's business in accordance with federal securities law. There is no free credit balance in a retirement or HSA. **Assets Separate from Your Brokerage Account** Only securities in the margin portion of your brokerage account contribute to margin and maintenance requirements. Other assets, which may be reported on your statement, including insurance products that are distributed by FBS and Fidelity Insurance Agency, Inc. and mutual fund only accounts held directly with the fund (Fidelity Mutual Fund Accounts) are not carried by NFS, nor covered by the Securities Investor Protection Corporation (SIPC) and do not count toward your margin and maintenance requirements. Assets held by Portfolio Advisory Services (PAS) are carried by NFS and are covered by SIPC but do not contribute toward your margin and maintenance requirements.

Short Account Balances Securities sold short are held in a segregated short account. These securities are marked-to-market for margin purposes, and any increase or decrease from the previous week's value is transferred weekly to your margin account. Fidelity represents your short account balance as of the last weekly mark-to-market, not as of the statement end date.

Information About Your Option Transactions Each transaction confirmation previously delivered to you contains full information about commissions and other charges. Assignments of American and European-style options are allocated among customer short positions pursuant to a random allocation procedure, a description is available upon request. Short positions in American-style options are liable for assignment anytime. The writer of a European-style option is subject to exercise assignment only during the exercise period. For more information about these, please call Fidelity at 800-544-6666.

Equity Dividend Reinvestment Shares credited to your account resulted from transactions by FBS acting as agent for your account, or the Depository Trust Company (DTC).

Price Information/Total Market Value The Total Market Value has been calculated out to 9 decimal places; however, the individual unit price is displayed in 5 decimal places. The Total Market Value represents prices obtained from various sources, may be impacted by the frequency with which such prices are reported and such prices are not guaranteed. Prices received from pricing vendors are generally based on current market quotes, but when such quotes are not available the pricing vendors use a variety of techniques to estimate value. These estimates, particularly for fixed income securities, may be based on certain minimum principal amounts (e.g. \$1 million) and may not reflect all of the factors that affect the value of the security, including liquidity risk. The prices provided are not firm bids or offers. Certain securities may reflect N/A or unavailable if the price for such security is generally not available from a pricing source. The Market Value of a security, including those priced at par value, may differ from its purchase price and may not closely reflect the value at which the security may be sold or purchased based on various market factors. The sale or redemption of any fixed income security prior to maturity may result in a loss. Prices for Certificates of Deposit (CDs) on your statement are generally estimates and are not based on actual market prices. The secondary market for CDs is generally illiquid. You should always request a current valuation for your securities prior to making a financial decision or placing an order. In executing orders on the Floor of the NYSE, the Floor broker may permit

Wash Sales If a wash sale occurs, the loss from the transaction is disallowed for federal income tax purposes but may be added to the cost basis of the newly-purchased shares. Fidelity adjusts the cost basis of newly-purchased shares when a wash sale occurs within an account as the result of an identical security purchase. Fidelity does not report disallowed losses or adjust cost basis related to wash sales triggered by sales and purchases of the same security within different accounts or by sales and purchases of "substantially identical" securities within the same or different accounts.

We deliver statements at least four times during the calendar year for any account with a balance. Please review your statement and report any inaccuracies or discrepancies. Inquires, concerns or questions regarding your brokerage account or the activity therein should be directed to Fidelity Brokerage Services LLC (FBS) by calling 800-544-6666, and NFS, who carries your brokerage accounts, by calling 800-800-6890. Any oral communications regarding inaccuracies or discrepancies should be reconfirmed in writing to protect your rights, including those under the Securities Investor Protection Act ("SIPA"). Please advise us of material changes in your investment objectives or financial situation related to your brokerage account(s).

Information About Mutual Funds and Their Performance An investment in a money market fund is not insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) or any other government agency. Although the fund seeks to preserve the value of your investment at \$1.00 per share, it is possible to lose money by investing in the fund. Before investing, consider the fund's investment objectives, risks, charges, and expenses. Contact Fidelity for a prospectus containing this information. Read it carefully. Performance data shown represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate, so you may have a gain or loss when shares are sold. Current performance may be higher or lower than that quoted. Visit Fidelity.com/performance for most recent month-end performance.

Each fund reserves the right to terminate or modify its exchange privilege in the future. In connection with access to, purchase of, and/or maintenance of positions in mutual fund and other investment products ("funds"), FBS or NFS may receive the sales loads and 12b-1 fees described in the prospectus as well as additional compensation, paid by the funds, their investment advisors or affiliates. Additional information about the source(s) and amount(s) of compensation as well as other remuneration received by FBS or NFS will be furnished to you upon written request. At the time you purchase shares of funds those shares will be assigned either a load, transaction fee (TF), or no transaction fee (NTF) status. When you subsequently sell those shares, any fees applicable to your transaction will be assessed based on the status assigned to the shares at the time of purchase.

the specialist to trade on parity with the order for some or all of the executions associated with filling that order, if such permission would not be inconsistent with the broker's best execution obligations. Individual securities trades placed for your Fidelity Personalized Portfolios account are completed on an agency basis by FBS. ("A") Alternative Investments - Investments such as direct participation program securities (e.g., partnerships, limited liability companies, and real estate investment trusts which are not listed on any exchange), commodity pools, private equity, private debt and hedge funds are generally illiquid investments and their current values may be different from the purchase price. Unless otherwise indicated, the values shown in this statement for such investments have been provided by the management, administrator or sponsor of each program or a third-party vendor without independent verification by FBS and represent the best estimate of the value of the investor's participation in the program, as of a date no greater than 18 months from the date of this statement. Therefore, the estimated values shown herein may not necessarily reflect actual market values or be realized upon liquidation. If an estimated value is not provided, valuation information is not available.

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Exhibit H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SIMING YANG, PRESTIGE TRADE
INVESTMENTS LIMITED, CAIYIN FAN,
SHUI CHONG (ERIC) CHANG,
BIAO CANG, JIA WU, and MING NI,

Defendants.

Case No. 12-cv-02473

Judge Matthew F. Kennelly

**DEFENDANT SIMING YANG'S RESPONSE
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant Siming Yang, by his undersigned counsel, pursuant to Federal Rule of Civil Procedure 33, hereby serves his Answers and Objections to Plaintiff, Securities and Exchange Commission's, First Set of Interrogatories.

PRELIMINARY STATEMENT

The scope of Defendant Siming Yang's Answer to Plaintiff's First Set of Interrogatories is based upon information reasonably available at this time. Defendant Siming Yang reserves the right to amend and/or supplement any answer as information is developed in the course of this lawsuit through discovery and factual investigation.

Defendant Siming Yang's Answer is made solely for the purpose of this action. Each answer is made subject to all objections as to competence, materiality, relevance or other objections as to admissibility that may apply in the event that any such answer, or the

material, or otherwise within the proper bounds of discovery, or that other discovery requests will be treated in a similar fashion in this or any other proceeding. Further, no response by Defendant Siming Yang to any Interrogatory shall be deemed to constitute an admission of any fact set forth or assumed in the discovery response.

F. Defendant Siming Yang objects to these Interrogatories to the extent that they, either separately or in combination with the Definitions, purport to impose upon Defendant Siming Yang a duty to search for and/or provide information that is not within his possession, custody, or control.

G. Defendant Siming Yang expressly incorporates these General Objections by reference into each of the following answers. Repetition of one of the General Objections in the answer to any specific Interrogatory does not constitute a waiver or limitation of any of the other General Objections.

**ANSWERS AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

1. Identify all securities, commodities, foreign currency trading or other financial brokerage accounts that you hold or have held or in which you have or had a direct or indirect interest since January 1, 2010, including but not limited to, the name of the account, the account number, and the firm, including its address, at which the account is or was held.

ANSWER:

Defendant objects to this request on the grounds that it is overly broad, and unduly burdensome, including but not limited to because it seeks a wide range of information that is not reasonably related to the issues identified in the Complaint, which involve a limited period of time in 2012. Subject to and without waiving these objections, Defendant states that since

October 2011, the brokerage accounts in which he has had a direct or indirect interest – or with which his name has been affiliated – include the following:

Wang Investment Associates, Inc. 50 Broad Street, Suite 1288 New York, NY 10004	Siming Yang	5*****645
Wang Investment Associates, Inc. 50 Broad Street, Suite 1288 New York, NY 10004	Caiyin Fan & Siming Yang	5*****350
Interactive Brokers, LLC One Pickwick Plaza Greenwich, CT 06830	Prestige Trade Investments LTD.	U*****954
Charles Schwab	Siming Yang (401(k)– Retirement Account)	*****214

2. Identify all bank accounts that you hold, have held or have used since January 1, 2010, including but not limited to, the name of the account, the account number, and the firm, including its address, at which the account is or was held.

ANSWER:

Defendant objects to this request on the grounds that it is overly broad, and unduly burdensome, including but not limited to because it seeks a wide range of information that is not reasonably related to the issues identified in the Complaint, which involve a limited period of time in 2012. Subject to and without waiving these objections, Defendant states that since October 2011, the bank accounts he has used include the following:

Citibank (Checking and Savings)	Siming Yang	*****207
EastWest Bank (dormant)	Siming Yang	*****301
HSBC Hong Kong (dormant)	Siming Yang	*** ***** 833

[REDACTED]

In addition, Defendant Yang has maintained ties to a residence in China at 8-101 Yangchengyuan, Jinan University, Guangzhou, Guangdong, China.

Dated: August 13, 2012

Respectfully submitted by:

By: /s/ Jonathan R. Buck
One of the Attorneys For
Defendant Siming Yang

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Exhibit I

1 APPEARANCES:

2
3 On behalf of the Securities and Exchange Commission:

4 JONATHAN S. POLISH, ESQ.

5 TIMOTHY S. LEIMAN, ESQ.

6 ANNE C. MCKINLEY, ESQ.

7 Securities and Exchange Commission

8 175 West Jackson Boulevard, Suite 900

9 Chicago, Illinois 60604

10 (312) 353-4947

11
12 On behalf of the Witness:

13 HOWARD J. ROSENBURG, ESQ. (Via telephone)

14 Kopecky, Schumacher, Bleakley, Rosenberg, PC

15 203 North LaSalle Street, Suite 1620

16 Chicago, Illinois 60601

17 (312) 380-6631

18

19

20

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22

23

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25

1 say. We have had some, what I would say, informal ideas

2 discussed, but I think we concluded that we weren't going

3 to reach a resolution by settlement.

4 JUDGE FOELAK: Okay. So what next?

5 Mr. Rosenberg, I have studied your answer

6 closely, and I just want to ask one question, just to

7 make something clear in my mind. Does Mr. Yang contest

8 that he worked for Baron Capital?

9 I mean, you brought out the point that the OIP

10 says that he worked for BAMCO, and that the Commission in

11 the injunctive proceeding said that he worked for Baron

12 Capital, and they are two different things.

13 MR. ROSENBURG: Right. Well, what I would say

14 is -- right, there are several entities, and Siming

15 Yang -- we contest that he was working for an investment

16 advisor. BAMCO was the investment advisor.

17 JUDGE FOELAK: So do you contest that he was

18 working for Baron Capital?

19 MR. ROSENBURG: No, but I want to be clear that

20 I am not sure that Baron Capital is an entity. There

21 were two entities that sound like Baron Capital, neither

22 of which were investment advisors, and there was a third

23 called BAMCO. We certainly are contesting that he wasn't

24 working for BAMCO.

25 JUDGE FOELAK: Okay.

1 PROCEEDINGS

2 JUDGE FOELAK: Let's go on the record.

3 This is a pre-hearing conference in the matter of Siming

4 Yang, Administrative Proceeding Number 3-15928. And this

5 pre-hearing conference is being held by telephone on

6 September 5, 2014, at about 11:00 o'clock Eastern Time.

7 And I am Judge Foelak. And can I have your appearances

8 for the record, please.

9 MR. POLISH: Yes, Your Honor. On behalf of the

10 Division, Anne McKinley, Timothy Leiman, and Jonathan

11 Polish.

12 MR. ROSENBURG: Good morning, Your Honor. This

13 is Howard Rosenberg on behalf of Siming Yang.

14 JUDGE FOELAK: Okay. Thank you. Firstly, are

15 there any settlement negotiations I should be apprised

16 of?

17 MR. POLISH: Your Honor, my understanding is

18 there have been some -- there was some mediation in

19 conjunction with the appeal that's been brought in front

20 of the 7th Circuit by Mr. Yang that was done in

21 conjunction with the Office of General Counsels Appellate

22 Division. But with respect to this proceeding, there

23 hasn't been much by way of formal settlement discussions.

24 Is that fair to say, Mr. Rosenberg?

25 MR. ROSENBURG: Yeah, I think that's fair to

1 MR. ROSENBURG: He was working for an entity

2 under the umbrella of Baron Capital.

3 JUDGE FOELAK: Okay. And Baron Capital

4 Management is, in fact, an investment advisor?

5 MR. ROSENBURG: It is not.

6 JUDGE FOELAK: Well, actually, I am looking at

7 a Form ADV that seems -- it is Baron Capital Management's

8 name, and it seems to indicate that it is an investment

9 advisor.

10 MR. ROSENBURG: Well, then that's something

11 that we will have to explore, because the only entity

12 anybody has ever alleged to be an investment advisor is

13 BAMCO.

14 JUDGE FOELAK: Okay. Well, I am just -- you

15 know, I can take official notice of the Commission's

16 public official records. And I am just looking at the

17 Form ADV, and it says that Baron Capital Management is an

18 investment advisor -- or it's Baron Capital Management's

19 Form ADV, but -- so you believe you have to look into

20 this?

21 MR. ROSENBURG: Right. We would have to -- you

22 would have to examine what the actual entities are that

23 we are talking about.

24 JUDGE FOELAK: Okay.

25 MR. ROSENBURG: Because a lot of Baron entities

1 sound the same. There's differences in the title.
 2 JUDGE FOELAK: Okay. But anyway, you are
 3 denying -- okay. Let me not put words in your mouth.
 4 Is he denying that he worked for BAMCO, which
 5 was the entity named in the OIP?
 6 MR. ROSENBERG: That's correct.
 7 JUDGE FOELAK: Okay. So that would be a
 8 contested material fact, because without him being
 9 associated with an investment advisor, there cannot be
 10 any sanctions or action taken under Section 203(f) of the
 11 Advisers Act, which is the section under which this was
 12 authorized.
 13 So what does the Division propose to do?
 14 MR. POLISH: Your Honor, we think this matter
 15 is ripe for summary adjudication. Firstly, with respect
 16 to the BAMCO matter, that is -- we think that the
 17 undisputed facts will establish that regardless of the --
 18 that he was affiliated with an investment advisor or
 19 registered broker with respect to the relevant Baron
 20 entity.
 21 In any event, we have also alleged in Paragraph
 22 3 of the OIP that he was acting as an investment advisor
 23 in his own right with respect to Prestige Trade
 24 Investments, Limited. And, in fact, that fact was a
 25 predicate of the jury's finding of liability with respect

1 to both a front-running claim and with respect to the
 2 filing of the -- the filing of a false Schedule 13(d).
 3 And so for those reasons, we think this matter is ripe
 4 for summary adjudication, and we would seek leave to file
 5 a motion for summary adjudication.
 6 JUDGE FOELAK: So your theory is that he was an
 7 unregistered investment advisor because of his
 8 association with this investment vehicle?
 9 MR. POLISH: Correct.
 10 JUDGE FOELAK: Okay. I don't know whether you
 11 would want to consider -- well, it isn't clear what he
 12 worked for, I guess, as far as the Baron organization
 13 went. Okay. He is denying that he worked for BAMCO.
 14 You could, of course, ask that the OIP be amended to say
 15 that he was associated with Baron Capital Management or
 16 any of its entities. But anyway, you are going with this
 17 Prestige thing, I guess.
 18 MR. POLISH: We are going to be arguing in the
 19 alternative -- not really in the alternative. We are
 20 going to be arguing both aspects.
 21 JUDGE FOELAK: When it comes to a motion for
 22 summary disposition, if he denies -- if he denies that he
 23 worked for BAMCO, I have to take that as, you know, a
 24 fact.
 25 MR. POLISH: Well, Your Honor, firstly --

1 JUDGE FOELAK: You know, in our summary
 2 dispositions -- this is not Federal Court.
 3 MR. POLISH: Understood. Your Honor, also,
 4 this was the subject of trial testimony too. So his
 5 denial is going to be trumped by sworn testimony that he
 6 gave during the trial. So his denial in this proceeding
 7 is one thing, but the fact of the matter is that this
 8 very topic was the subject of testimony during the trial.
 9 And, in fact, it was -- it was the subject of testimony
 10 elicited by Mr. Yang himself, and that would be properly
 11 considered by this tribunal.
 12 JUDGE FOELAK: It's testimony, but it's not --
 13 I can't take official notice of it. It's not a ruling of
 14 the Court. I guess you can go ahead and file your motion
 15 for summary disposition and see where it goes, but it
 16 does seem to be a problem.
 17 MR. POLISH: Well, Your Honor, to the extent
 18 that we feel the need to amend the OIP, we can give
 19 notice of that within -- can we give notice within seven
 20 days?
 21 JUDGE FOELAK: That sounds like a good idea.
 22 And this type of amendment request would have to be made
 23 to the Commission.
 24 MR. POLISH: Got it.
 25 JUDGE FOELAK: Because it would be beyond my

1 authority.
 2 MR. POLISH: The only other point I want to
 3 make, Your Honor, is that I don't think it makes sense,
 4 from a legal standpoint, to get bogged down in who was
 5 signing -- which Baron entity was signing Mr. Yang's
 6 checks. That is not dispositive of whether or not Mr.
 7 Yang was affiliated or associated with an investment
 8 advisor or broker-dealer. So that's the other point that
 9 I wanted to note.
 10 JUDGE FOELAK: Okay. So you are going to give
 11 notice within seven days of what your plans are with
 12 reference to amending the OIP. And do you want to put
 13 any possible dates of summary disposition on hold pending
 14 that?
 15 MR. POLISH: Well, Your Honor, may I suggest
 16 that as a contingency plan, assuming we don't seek
 17 amendment, that we can have dates so that we could just
 18 sort of streamline this and move it forward, and obviate
 19 the need for another hearing?
 20 JUDGE FOELAK: Or another pre-hearing.
 21 MR. POLISH: Another pre-hearing.
 22 JUDGE FOELAK: Yeah, okay. Have you and Mr.
 23 Rosenberg discussed any dates?
 24 MR. POLISH: We haven't, but we are flexible,
 25 Your Honor. We are prepared to offer our motion by -- if

1 we could have until the first week of October.
 2 JUDGE FOELAK: Okay.
 3 MR. POLISH: And I recognize, Mr. Rosenberg,
 4 that there are some holidays that might interfere. From
 5 our standpoint, we are flexible with -- in terms of when
 6 his response is due.
 7 MR. ROSENBURG: And this is Howard Rosenberg.
 8 Before we get to that point, we would like to seek that
 9 the AP be stayed pending Mr. Yang's appeal before the 7th
 10 Circuit.
 11 JUDGE FOELAK: Okay. I can rule on that now.
 12 The Commission's policy is -- if there is an injunction
 13 in place, it's a good predicate for one of these
 14 administrative proceedings, and it is not stayed pending
 15 appeal, although, of course, if the person wins his
 16 appeal, then he can either get the administrative
 17 proceeding stopped, or if it's ended adversely to him,
 18 get the sanction lifted. So your request for staying the
 19 proceeding pending an appeal is denied.
 20 MR. ROSENBURG: And, Your Honor, I understand
 21 the decision. To make our record, though, we do want to
 22 submit a written motion.
 23 JUDGE FOELAK: Okay. Okay. Okay. This
 24 contingency plan on the motion for summary disposition,
 25 if I put him down for October 6th, should I put you down

1 PROOFREADER'S CERTIFICATE
 2
 3 In the Matter of: SIMING YANG
 4 ADMINISTRATIVE PROCEEDINGS- PRE-HEARING CONFERENCE
 5 File Number: 3-15928
 6 Date: Friday, September 5, 2014
 7 Location: Chicago, Illinois
 8
 9 This is to certify that I, Donna S. Raya,
 10 (the undersigned), do hereby swear and affirm that the
 11 attached proceedings before the U.S. Securities and
 12 Exchange Commission were held according to the record and
 13 that this is the original, complete, true and accurate
 14 transcript that has been compared to the reporting or
 15 recording accomplished at the bearing.
 16
 17 _____
 18 (Proofreader's Name) (Date)
 19
 20
 21
 22
 23
 24
 25

1 for November 3rd?
 2 MR. ROSENBURG: Sure.
 3 JUDGE FOELAK: Okay. I will put the Division
 4 down for a reply for November 10th.
 5 Okay. Does anyone have anything else?
 6 MR. POLISH: Not from the Division, Your Honor.
 7 JUDGE FOELAK: Let me just ask you one thing,
 8 Mr. Rosenberg. You received the OIP sometime in -- do
 9 you know when Mr. Yang actually himself was able to
 10 eyeball it after you received it?
 11 MR. ROSENBURG: I don't know the answer to
 12 that.
 13 JUDGE FOELAK: Okay. Okay. Fine.
 14 Okay. Does anyone have anything else?
 15 MR. POLISH: Not for the division.
 16 MR. ROSENBURG: Nothing.
 17 JUDGE FOELAK: Okay. I will put out an order
 18 memorializing what had transpired. And thank you for
 19 your appearances.
 20 MR. POLISH: Thank you, Your Honor.
 21 MR. ROSENBURG: Thank you.
 22 JUDGE FOELAK: Bye.
 23 MR. POLISH: And we are off the record.
 24 (Whereupon, at 10:16 a.m. (CDT); 11:16 a.m.
 25 (EST), the pre-hearing conference was concluded.)

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Honor 3:9,12 3:17 6:14 7:25 8:3,17 9:3,15,25 10:20 11:6 11:20	know 5:15 7:10,23 8:1 11:9,11	N 3:1 name 5:8 12:18 named 6:5 need 8:18 9:19	P 3:1 PAGES 1:8 Paragraph 6:21 PC 2:14 pending 9:13 10:9,14,19	public 5:16 pursuant 1:15 put 6:3 9:12 10:25,25 11:3,17	3:12,13,24 3:25 4:5,13 4:19 5:1,5 5:10,21,25 6:6 9:23 10:3,7,7,20 11:2,8,11 11:16,21
Howard 2:13 3:13 10:7	L	negotiations 3:15 neither 4:21 North 2:15 note 9:9 notice 1:15 5:15 8:13 8:19,19 9:11	person 10:15 place 1:9 10:13 plan 9:16 10:24 plans 9:11 please 3:8 point 4:9 9:2 9:8 10:8 policy 10:12 Polish 2:4 3:9 3:11,17 6:14 7:9,18 7:25 8:3,17 8:24 9:2,15 9:21,24 10:3 11:6 11:15,20,23	Q	11:2,8,11 11:16,21
I	LaSalle 2:15 LAW 1:19 leave 7:4 legal 9:4 Leiman 2:5 3:10 Let's 3:2 liability 6:25 lifted 10:18 Limited 6:24 Location 12:7 look 5:19 looking 5:6 5:16 lot 5:25	November 11:1,4 Number 3:4 12:5	Polish 2:4 3:9 3:11,17 6:14 7:9,18 7:25 8:3,17 8:24 9:2,15 9:21,24 10:3 11:6 11:15,20,23	question 4:6	rule 10:11 ruling 8:13
idea 8:21 ideas 4:1 Illinois 1:11 2:9,16 12:7 indicate 5:8 informal 4:1 injunction 10:12 injunctive 4:11 interfere 10:4 investment 4:15,16,22 5:4,8,12,18 6:9,18,22 7:7,8 9:7 Investments 6:24	M	O	plan 9:16 10:24 plans 9:11 please 3:8 point 4:9 9:2 9:8 10:8 policy 10:12 Polish 2:4 3:9 3:11,17 6:14 7:9,18 7:25 8:3,17 8:24 9:2,15 9:21,24 10:3 11:6 11:15,20,23	R	S
J	Management 5:4,17 7:15 Manageme... 5:7,18 material 6:8 matter 1:3,14 3:3 6:14,16 7:3 8:7 12:3 MCKINLEY 2:6 3:10 mean 4:9 mediation 3:18 memorializ... 11:18 mind 4:7 morning 3:12 motion 7:5 7:21 8:14 9:25 10:22 10:24	October 10:1 10:25 offer 9:25 Office 3:21 official 5:15 5:16 8:13 OIP 4:9 6:5 6:22 7:14 8:18 9:12 11:8 okay 3:14 4:4 4:25 5:3,14 5:24 6:2,3,7 7:10,13 9:10,22 10:2,11,23 10:23,23 11:3,5,13 11:13,14,17 order 11:17 organization 7:12 original	O 3:1 obviate 9:18 October 10:1 10:25 offer 9:25 Office 3:21 official 5:15 5:16 8:13 OIP 4:9 6:5 6:22 7:14 8:18 9:12 11:8 okay 3:14 4:4 4:25 5:3,14 5:24 6:2,3,7 7:10,13 9:10,22 10:2,11,23 10:23,23 11:3,5,13 11:13,14,17 order 11:17 organization 7:12 original	R 3:1 Raya 12:9 reach 4:3 really 7:19 reasons 7:3 received 11:8 11:10 recognize 10:3 record 3:2,8 10:21 11:23 12:12 recording 12:15 records 5:16 reference 9:12 regardless 6:17 registered 6:19 relevant 6:19 reply 11:4 reporting 1:24 12:14 request 8:22 10:18 resolution 4:3 respect 3:22 6:15,19,23 6:25 7:1 response 10:6 right 4:13,14	S 2:4,5 3:1 12:9 sanction 10:18 sanctions 6:10 says 4:10 5:17 Schedule 7:2 Schumacher 2:14 section 6:10 6:11 Securities 1:1 1:9 2:3,7 12:11 see 8:15 seek 7:4 9:16 10:8 sense 9:3 September 1:12 3:6 12:6 Services 1:24 settlement 3:15,23 4:3 seven 8:19 9:11 signing 9:5,5 Siming 1:5 3:3,13 4:14 12:3 sort 9:18

sound 4:21 6:1	7:3 9:3	2:8	380-6631
sounds 8:21	third 4:22	wins 10:15	2:17
standpoint 9:4 10:5	Time 3:6	Witness 2:12	<hr/> 4 <hr/>
STATES 1:1	Timothy 2:5 3:10	words 6:3	467-9200 1:25
stayed 10:9 10:14	title 6:1	worked 4:8 4:10,11 6:4 7:12,13,23	<hr/> 5 <hr/>
staying 10:18	topic 8:8	working 4:15 4:18,24 5:1	5 1:12 3:6 12:6
stopped 10:17	Trade 6:23	written 10:22	<hr/> 6 <hr/>
streamline 9:18	transcript 12:14	<hr/> Y <hr/>	6th 10:25 60601 2:16 60604 2:9
Street 2:15	transpired 11:18	Yang 1:5 3:4 3:13,20 4:7 4:15 8:10 9:7 11:9 12:3	<hr/> 7 <hr/>
studied 4:5	trial 8:4,6,8	Yang's 9:5 10:9	7th 3:20 10:9
subject 8:4,8 8:9	tribunal 8:11	Yeah 3:25 9:22	<hr/> 9 <hr/>
submit 10:22	true 12:13		900 1:10 2:8
suggest 9:15	trumped 8:5	<hr/> 1 <hr/>	
Suite 1:10 2:8,15	two 4:12,21	1 1:8	
summary 6:15 7:4,5 7:22 8:1,15 9:13 10:24	type 8:22	10th 11:4	
sure 4:20 11:2	<hr/> U <hr/>	10:00 1:15	
swear 12:10	umbrella 5:2	10:16 11:24	
sworn 8:5	undersigned 12:10	11:00 1:16 3:6	
<hr/> T <hr/>	understand 10:20	11:16 11:24	
take 5:15 7:23 8:13	understan... 3:17	13 1:8	
taken 6:10	Understood 8:3	13(d) 7:2	
talking 5:23	undisputed 6:17	1620 2:15	
telephone 1:15,18 2:13 3:5	UNITED 1:1	175 1:10 2:8	
terms 10:5	unregistered 7:7	<hr/> 2 <hr/>	
testimony 8:4 8:5,8,9,12	U.S 12:11	2014 1:12 3:6 12:6	
thank 3:14 11:18,20,21	<hr/> V <hr/>	202 1:25	
theory 7:6	vehicle 7:8	203 2:15	
thing 7:17 8:7 11:7	<hr/> W <hr/>	203(f) 6:10	
things 4:12	want 4:6,19 7:11 9:2,12 10:21	<hr/> 3 <hr/>	
think 3:25 4:2 6:14,16	wanted 9:9	3 6:22	
	wasn't 4:23	3rd 11:1	
	way 3:23	3-15928 1:4 3:4 12:5	
	week 10:1	312 2:10,17	
	went 7:13	353-4947 2:10	
	weren't 4:2		
	West 1:10		

Exhibit J

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73637 / November 19, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3970 / November 19, 2014

Admin. Proc. File No. 3-15928

In the Matter of
SIMING YANG

ORDER GRANTING
MOTION TO AMEND ORDER
INSTITUTING PROCEEDINGS

The Division of Enforcement requests that we amend the order instituting these proceedings ("OIP") to take account of developments that have occurred since it was issued. The request is unopposed and, for the reasons discussed below, we have determined to grant it.

I. BACKGROUND

On May 27, 2014, following a jury verdict, a district court entered a final judgment¹ against Siming Yang, permanently enjoining him from future violations of Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 and Rules 10b-5, 13d-1, and 13d-2 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940.² The complaint alleged, among other things, that Yang, a Chinese citizen who was acting as an investment adviser to a start-up investment firm, Prestige Trade Investments Limited, engaged in a fraudulent "front-running"³ scheme and caused Prestige to file false Schedules 13D with the Commission. After a

¹ The district court also ordered Yang to pay \$150,000 in civil money penalties.

² 15 U.S.C. §§ 78j(b), 78m(d), 80b-6(1) & (2); 17 C.F.R. §§ 240.10b-5, 13d-1, 13d-2. *See SEC v. Siming Yang*, Civil Action No. 12-cv-2473 (N.D. Ill. May 27, 2014), 2014 WL 2198323.

³ "Front-running" refers to a situation where one buyer intentionally trades in front of another, larger, buyer in order to take advantage of any benefit the larger buyer's purchase generates in the market." *In re State Street Bank & Trust Co. Fixed Income Funds Inv. Litig.*, 842 F. Supp. 2d 614, 640 n.18 (S.D.N.Y. 2012).

six-day trial, the jury found Yang liable on the charges of front-running and filing false Schedules 13D.⁴

On June 12, 2014, we instituted this follow-on proceeding against Yang pursuant to Advisers Act Section 203(f).⁵ In the OIP, the Division alleged that, from 2008 until March 30, 2012, Yang was employed as a research analyst by BAMCO, Inc., a New York-based registered broker-dealer and investment adviser. In his answer to the OIP, however, Yang denied that he was employed by BAMCO.

On September 5, 2014, a law judge held a prehearing conference at which Yang's counsel again denied Yang's association with BAMCO (or any registered investment adviser), although he admitted that Yang was employed by one of two affiliated subsidiaries of Baron Capital Group, Inc., an investment management holding company.⁶ The law judge stated that Yang's denial could create a disputed issue of material fact precluding summary disposition "because without [Yang] being associated with an investment adviser, there cannot be any sanctions or action taken under Section 203(f)."⁷ The law judge suggested that the Division consider moving to amend the OIP to address Yang's associational status and thereby obviate the need for a hearing on this issue.

II. Amending the OIP is appropriate

On September 18, 2014, the Division filed a motion to amend the OIP. The Division states that the purpose of the amendment is to address Yang's "equivocation on his employment status and negate the need for a hearing." According to the Division, regardless of which subsidiary Yang may claim as his employer, he nonetheless was associated with a registered broker-dealer and/or registered investment adviser. The amendment identifies BAMCO and the two subsidiaries of Baron Capital Group, Inc. as alternative employers, identifies their registration status, and includes Exchange Act Section 15(b) as an alternative statutory basis for

⁴ The jury did not find Yang liable on the charge that he engaged in insider trading in the stock of Zhongpin Inc.

⁵ 15 U.S.C. § 80b-3(f).

⁶ At trial, Yang admitted that he worked for an entity affiliated with "Baron Capital." Baron Capital Group, Inc.'s affiliated subsidiaries are Baron Capital, Inc., a registered broker-dealer, and Baron Capital Management, Inc., a registered investment adviser. It is not clear from the motion papers what the relationship is between BAMCO and Baron Capital Group, Inc. or its subsidiaries.

⁷ Pursuant to the Commission's Rule of Practice 250, a law judge may grant a motion for summary disposition only if there is no genuine issue with regard to any material fact and the movant is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250.

the OIP. The amendment also clarifies that Yang acted as an unregistered investment adviser to Prestige.

Under Rule of Practice 200(d)(1), we may, at any time, upon motion by a party, amend an OIP to include new matters of fact or law.⁸ We have stated that amendments of OIPs to reflect "subsequent developments"⁹ "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced."¹⁰ The Division's proposed amendment to the OIP meets these standards. It reflects "subsequent developments," *i.e.*, Yang's denial of his employment with BAMCO in his answer to the OIP and at the pretrial hearing, and his admission at that hearing that he was employed by one of two affiliated subsidiaries of Baron Capital Group, Inc. In addition, it can neither surprise nor prejudice Yang. It is therefore appropriate, under the circumstances, to grant the Division's motion to amend the OIP to clarify Yang's employment status and to add Section 15(b) of the Securities Exchange Act of 1934 as an alternative statutory basis for this proceeding.¹¹

Accordingly, IT IS ORDERED that the Division of Enforcement's motion to amend the Order Instituting Proceedings issued on June 12, 2014 against Siming Yang is GRANTED; and it is further

ORDERED that Section I of the Order Instituting Proceedings issued on June 12, 2014, is amended to add that proceedings be "instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934"; and it is further

ORDERED that Section II Paragraph 1 of the Order Instituting Proceedings issued on June 12, 2014, is amended to allege that Siming Yang "was employed as a research analyst with New York-based registered investment adviser, BAMCO, Inc. ("BAMCO"), and/or registered broker-dealer Baron Capital, Inc. and/or registered investment adviser Baron Capital Management, Inc., all affiliated subsidiaries of investment management holding company, Baron Capital Group, Inc."; and it is further

⁸ 17 C.F.R. § 201.200(d)(1).

⁹ *Carl L. Shipley*, Securities Exchange Act Release No. 10870, 1974 WL 161761, at *4 (June 21, 1974).

¹⁰ *Robert David Beauchene*, Exchange Act Release No. 68974, 2013 WL 661619, at *2 (Feb. 25, 2013) (quoting *Charles K. Seavey*, Investment Advisers Act Release No. 1925A, 2001 WL 228030, at *2 (Mar. 9, 2001)).

¹¹ *See, e.g., Seavey*, 2001 WL 228030, at *1-2 (granting motion to amend order instituting proceedings to include Respondent's subsequent guilty plea and sentence to federal money laundering and add Advisers Act Section 203(f) as an alternative statutory basis).

ORDERED that Section II Paragraph 1 of the Order Instituting Proceedings issued on June 12, 2014, is amended to allege that "Yang also acted as the investment adviser to his own investment firm, Prestige Trade Investments Limited ("Prestige")"; and it is further

ORDERED that Section III of the Order Instituting Proceedings issued on June 12, 2014, is amended to institute public administrative proceedings to determine "what, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act."; and it is further

ORDERED that Respondent shall file an amended answer to the allegations contained in the Order Instituting Proceedings, as amended herein, within twenty days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice.¹²

By the Commission.

Brent J. Fields
Secretary

¹² 17 C.F.R. § 201.220.

Exhibit K

U.S. MASTER'S

I-129, Petition for a
Nonimmigrant Worker

START HERE - Type or print in black ink.

For USCIS Use Only

Part 1. Information about the employer filing this petition (If the employer is an individual, complete Number 1. Organizations should complete Number 2.)

1. Family Name (Last Name) Given Name (First Name)
 N/A N/A
 Full Middle Name Telephone No. w/Area Code
 N/A
 2. Company or Organization Name Telephone No. w/Area Code
 BAMCO, Inc.
 (In)
 Patrick M. Patalino, General Counsel
 City State/Province
 New York NY
 Country Zip/Postal Code E-Mail Address (If Any)
 U.S.A. 10153
 Federal Employer Identification # U.S. Social Security # Individual Tax #

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	
<input type="checkbox"/> Petitioner Interviewed on	
<input type="checkbox"/> Beneficiary Interviewed on	

about this petition (See instructions for fee information.)

1. Requested Nonimmigrant Classification. (Write classification symbol): H-1B

2. Basis for Classification (Check one):

- a. New employment (including new employer filing H-1B extension).
- b. Continuation of previously approved employment without change with the same employer.
- c. Change in previously approved employment.
- d. New concurrent employment.
- e. Change of employer.
- f. Amended petition.

3. If you checked Box 2b, 2c, 2d, 2e, or 2f, give the petition receipt number.
 N/A

4. Prior Petition. If the beneficiary is in the U.S. as a nonimmigrant and is applying to change and/or extend his or her status, give the prior petition or application receipt #:
 N/A

5. Requested Action (Check one):

- a. Notify the office in Part 4 so the person(s) can obtain a visa or be admitted. (NOTE: a petition is not required for an E-1 or E-2 visa).
- b. Change the person(s) status and extend their stay since the person(s) are all now in the U.S. in another status (see instructions for limitations). This is available only where you check "New Employment" in Item 2, above.
- c. Extend the stay of the person(s) since they now hold this status.

Class: _____
 # of Workers: _____
 Priority Number: _____
 Validity Dates: _____
 From: _____
 To: _____

Classification Approved
 Consulate/POE/PFI Notified At _____
 Extension Granted
 COS/Extension Granted

Partial Approval (explain)

Action Block

To Be Completed by
 Attorney or Representative, if any.
 Fill in box if G-28 is attached to represent the applicant.
 ATTY State License # NY



Part 2. Information about this petition (See instructions for fee information.) (Continued)

- d. Amend the stay of the person(s) since they now hold this status.
- e. Extend the status of a nonimmigrant classification based on a Free Trade Agreement. (See Free Trade Supplement for TN and H1B1 to Form I-129).
- f. Change status to a nonimmigrant classification based on a Free Trade Agreement. (See Free Trade Supplement for TN and H1B1 to Form I-129).

6. Total number of workers in petition (See instructions relating to when more than one worker can be included):

One (1)

Part 3. Information about the person(s) you are filing for Complete the blocks below. Use the continuation sheet to name each person included in this petition.

1. If an Entertainment Group, give the Group Name

N/A		
Family Name (Last Name)	Given Name (First Name)	Full Middle Name
YANG	Siming	N/A
All Other Names Used (include maiden name and names from all previous marriages)		
None.		
Date of Birth (mm/dd/yyyy)	U.S. Security Number (if any)	Age
[REDACTED]	[REDACTED]	[REDACTED]
	Province of Birth	Country of Birth
CHINA	Guangzhou	CHINA

2. If in the United States, Complete the Following:

Date of Last Arrival (mm/dd/yyyy)	Arrival/Departure Document	Current Nonimmigrant Status	
02/03/2009	[REDACTED]	F-1 OPT	
Date Status Expires (mm/dd/yyyy)	Passport Number	Date Passport Issued (mm/dd/yyyy)	Date Passport Expires (mm/dd/yyyy)
D/S	[REDACTED]	01/22/2008	01/21/2018
[REDACTED]			

Part 4. Processing Information

1. If the person named in Part 3 is outside the United States or a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want notified if this petition is approved.

Type of Office (Check one): Consulate Pre-flight inspection Port of Entry

Office Address (City)

U.S. State or Foreign Country

Guangzhou CHINA

Person's Foreign Address

[REDACTED]



Part 4. Processing Information (Continued)

2. Does each person in this petition have a valid passport?
 Not required to have passport No - explain on separate paper Yes
3. Are you filing any other petitions with this one? No Yes - How many?
4. Are applications for replacement/initial I-94s being filed with this petition? No Yes - How many?
5. Are applications by dependents being filed with this petition? No Yes - How many?
6. Is any person in this petition in removal proceedings? No Yes - explain on separate paper
7. Have you ever filed an immigrant petition for any person in this petition? No Yes - explain on separate paper
8. If you indicated you were filing a new petition in Part 2, within the past seven years has any person in this petition:
a. Ever been given the classification you are now requesting? No Yes - explain on separate paper
b. Ever been denied the classification you are now requesting? No Yes - explain on separate paper
9. Have you ever previously filed a petition for this person? No Yes - explain on separate paper
10. If you are filing for an entertainment group, has any person in this petition not been with the group for at least one year? N/A No Yes - explain on separate paper

Part 5. Basic information about the proposed employment and employer (Attach the supplement relating to the classification you are requesting.)

1. Job Title: 2. Nontechnical Job Description:
3. LCA Case Number: 4. NAICS Code:
- work if different from address in Part 1. (Street number and name, city/town, state, zip code)
6. Is this a full-time position?
 No - Hours per week: Yes - Wages per week or per year:
7. Other Compensation (Explain): 8. Dates of intended employment (mm/dd/yyyy):
From: To:



Part 5. Basic information about the proposed employment and employer (Attach the supplement relating to the classification you are requesting.) (Continued)

9. Type of Petitioner - Check one:

- U.S. citizen or permanent resident Organization Other - explain on separate paper

10. Type of Business

Financial Services & Asset Management Firm

11. Year Established

1987

12. Current Number of Employees

Over 80

13. Gross Annual Income

Approx. \$9.4 Billion (Assets Under Management)

14. Net Annual Income

Part 6. Signature Read the information on penalties in the instructions before completing this section.

I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as stated in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit being sought.

Signature

Patrick M. Patallno

Daytime Phone Number (Area/Country Code)

(212) 583-2000

Print Name

Patrick M. Patallno, General Counsel

Date (mm/dd/yyyy)

3/17/2009

NOTE: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for the requested benefit and this petition may be denied.

Part 7. Signature of person preparing form, if other than above

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have any knowledge.

Signature

Matthew S. Dunn

Daytime Phone Number (Area/Country Code)

(212) 715-9408

Print Name

Matthew S. Dunn, Esq.

Date (mm/dd/yyyy)

3/30/09

Firm Name and Address

Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, 23rd Floor, New York, NY 10036, U.S.A.



Form I-129 (Rev. 01/22/09) Page 4

CONFIDENTIAL TREATMENT REQUESTED BC000170

SEC-BC-0000061

Department of Homeland Security
U.S. Citizenship and Immigration Services

**H Classification Supplement
to Form I-129**

1. Name of person or organization filing petition:

BAMCO, Inc.

2. Name of person or total number of workers or trainees you are filing for:

Siming YANG

3. List each alien's prior periods of stay in H or L classification in the United States for the last six years (aliens requesting H-2A or H-2B classification need only list the last three years). Be sure to only list those periods in which each alien was actually in the United States in an H or L classification. Do not include periods in which the alien was in a dependent status, for example, H-4 or L-2 status.

NOTE: Submit photocopies of Forms I-94, I-797, and/or other USCIS issued documents noting these periods of stay in the H or L classification. If more space is needed, attach an additional sheet.

Subject's Name	Period of Stay (mm/dd/yyyy)	
	From	To
Siming YANG - no prior periods of stay in H or L classification in the U.S.		

4. Classification sought (Check one):

H-1B1 Specialty occupation

H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD)

H-1B3 Fashion model of national or international acclaim

H-2A Agricultural worker

H-2B Non-agricultural worker

H-3 Trainee

H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1B classification

1. Describe the proposed duties

Financial Analyst - please see annexed supporting statement for details.

2. Alien's present occupation and summary of prior work experience

Please see annexed supporting statement for details.



Section 1. Complete this section if filing for H-1B classification (Continued)

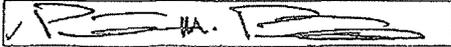
Statement for H-1B specialty occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment.

Petitioner's Signature

Print or Type Name

Date (mm/dd/yyyy)



Patrick M. Patalino, General Counsel

03/17/2009

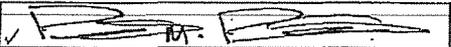
Statement for H-1B specialty occupations and U.S. Department of Defense projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of Authorized Official of Employer

Print or Type Name

Date (mm/dd/yyyy)



Patrick M. Patalino, General Counsel

03/17/2009

Statement for H-1B U.S. Department of Defense projects only:

I certify that the alien will be working on a cooperative research and development project or a co-production project under a reciprocal government-to-government agreement administered by the U.S. Department of Defense.

DOD Project Manager's Signature

Print or Type Name

Date (mm/dd/yyyy)

N/A

Section 2. Complete this section if filing for H-2A or H-2B classification

1. Employment is: (Check one)

2. Temporary need is: (Check one)

a. Seasonal

c. Intermittent

a. Unpredictable

c. Recurrent annually

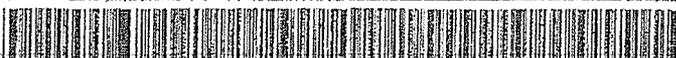
b. Peak Load

d. One-time occurrence

b. Periodic

3. Explain your temporary need for the alien's services (attach a separate sheet if additional space is needed.)

Empty box for explaining temporary need for the alien's services.



Department of Homeland Security
U.S. Citizenship and Immigration Services

H-1B Data Collection and Filing Fee Exemption Supplement

Petitioner's Full Name

Part A. General Information

1. Employer Information - (check all items that apply)

- a. Is the petitioner a dependent employer? No Yes
- b. Has the petitioner ever been found to be a willful violator? No Yes
- c. Is the beneficiary an exempt H-1B nonimmigrant? N/A No Yes
 - 1. If yes, is it because the beneficiary's annual rate of pay is equal to at least \$60,000? No Yes
 - 2. Or is it because the beneficiary has a master's or higher degree in a speciality related to the employment? No Yes

2. Beneficiary's Last Name First Name Middle Name

Attention To or In Care Of Current Residential Address

City State Zip/Postal Code

U.S. Social Security # (If Any) I-94 # (Arrival/Departure Document) Previous Receipt # (If Any)

Level of Education (Check one box below)

<input type="checkbox"/> NO DIPLOMA	<input type="checkbox"/> Associate's degree (for example: AA, AS)
<input type="checkbox"/> HIGH SCHOOL GRADUATE - high school DIPLOMA or the equivalent (example: GED)	<input type="checkbox"/> Bachelor's degree (for example: BA, AB, BS)
<input type="checkbox"/> Some college credit, but less than one year	<input checked="" type="checkbox"/> Master's degree (for example: MA, MS, MEng, MEd, MSW, MBA)
<input type="checkbox"/> One or more years of college, no degree	<input type="checkbox"/> Professional degree (for example: MD, DDS, DVM, LLB, JD)
	<input type="checkbox"/> Doctorate degree (for example: PhD, EdD)

4. Major/Primary Field of Study

5. Has the beneficiary of this petition earned a master's or higher degree from a U.S. institution of higher education as defined in 20 U.S.C. section 1001(a)?

No Yes (If "Yes" provide the following information):

Name of the U.S. institution of higher education

Date Degree Awarded Type of U.S. Degree

Address of the U.S. institution of higher education

6. Rate of Pay Per Year

7. LCA Code

8. NAICS Code



CONFIDENTIAL TREATMENT REQUESTED BC000173

Part B. Fee Exemption and/or Determination

In order for USCIS to determine if you must pay the additional \$1,500 or \$750 fee, answer all of the following questions:

- 1. Yes No Are you an institution of higher education as defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001(a)?
- 2. Yes No Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as such institutions of higher education are defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001(a)?
- 3. Yes No Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)?
- 4. Yes No Is this the second or subsequent request for an extension of stay that you have filed for this alien?
- 5. Yes No Is this an amended petition that does not contain any request for extensions of stay?
- 6. Yes No Are you filing this petition in order to correct a USCIS error?
- 7. Yes No Is the petitioner a primary or secondary education institution?
- 8. Yes No Is the petitioner a non-profit entity that engages in an established curriculum-related clinical training of students registered at such an institution?

If you answered "Yes" to any of the questions above, then you are required to submit the fee for your H-1B Form I-129 petition, which is \$320. If you answered "No" to all questions, please answer Question 9.

- 9. Yes No Do you currently employ a total of no more than 25 full-time equivalent employees in the United States, including any affiliate or subsidiary of your company?

If you answered "Yes" to Question 9 above, then you are required to pay an additional fee of \$750. If you answered "No", then you are required to pay an additional fee of \$1,500.

NOTE: On or after March 8, 2005, a U.S. employer seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another U.S. employer, must submit an additional \$500 fee. This additional \$500 Fraud Prevention and Detection fee was mandated by the provisions of the H-1B Visa Reform Act of 2004. There is no exemption from this fee.

Part C. Numerical Limitation Exemption Information

- 1. Yes No Are you an institution of higher education as defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001(a)?
- 2. Yes No Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as such institutions of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)?
- 3. Yes No Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)?
- 4. Yes No Is the beneficiary of this petition a J-1 nonimmigrant alien who received a waiver of the two-year foreign residency requirement described in section 214 (l)(1)(B) or (C) of the Act?
- 5. Yes No Has the beneficiary of this petition been previously granted status as an H-1B nonimmigrant in the past 6 years and not left the United States for more than one year after attaining such status?
- 6. Yes No If the petition is to request a change of employer, did the beneficiary previously work as an H-1B for an institution of higher education, an entity related to or affiliated with an institution of higher education, or a nonprofit research organization or governmental research institution defined in questions 1, 2 and 3 of Part C of this form?
N/A



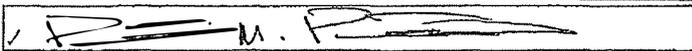
Part C. Numerical Limitation Exemption Information (Continued)

7. Yes No Has the beneficiary of this petition earned a master's or higher degree from a U.S. institution of higher education, as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)?

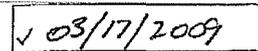
I certify under penalty of perjury, under the laws of the United States of America, that this attachment and the evidence submitted with it is true and correct. If filing this on behalf of an organization or entity, I certify that I am empowered to do so by that organization or entity. I authorize the release of any information from my records, or from the petitioning organization or entity's records, that U.S. Citizenship and Immigration Services may need to determine eligibility for the exemption being sought.

Certification

Signature



Date (mm/dd/yyyy)



Print Name

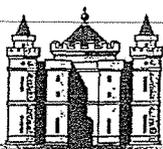
Patrick M. Patalino

Title

General Counsel



Exhibit L



BAMCO

March 17, 2009

VIA FEDERAL EXPRESS

Premium Processing Service
U.S. Citizenship and Immigration Services
Vermont Service Center
ATTN: U.S. Master's Cap



RE: I-129 H-1B petition and change of status
request of BAMCO, Inc. for Mr. Siming YANG

U.S. MASTER'S CAP

*The beneficiary was awarded an advanced
degree from a U.S. institution of higher education*

Dear Sir/Madam:

We write in support of our H-1B petition filed for Mr. Siming Yang, whom we wish to employ in the specialty occupation position of Financial Analyst at our office in New York. In addition, we write to request that you change Mr. Yang's nonimmigrant status from F-1 (optional practical training) to H-1B. *Mr. Yang was awarded a Master of Business Administration degree by Columbia Business School in New York.*

The Petitioner

BAMCO, Inc. ("BAMCO"), an SEC registered investment adviser to the Baron mutual funds, is wholly-owned by Baron Capital Group, Inc. ("BCG"), a 100% employee-owned holding company with Ronald Baron and his family owning the majority of the company. BCG also wholly owns Baron Capital, Inc., an SEC registered broker-dealer and the distributor of Baron mutual funds, and Baron Capital Management, Inc., an SEC registered investment adviser to separately manage accounts, one offshore Fund and one limited partnership. BAMCO has been in business since 1987. Our current assets under management are in excess of \$9.4 billion, and we have over 80 employees.

KL2 2595972.2

767 FIFTH AVENUE
49TH FLOOR
NEW YORK, NY 10019
TEL: 212.583.2000
FAX: 212.583.2050

CONFIDENTIAL TREATMENT REQUESTED BC000176

SEC-BC-0000067

Funds Overview

The Baron Family of Funds invests in small, medium-sized and large-sized growth companies as follows: Baron Asset Fund invests primarily in mid-sized growth companies with, in our view, favorable growth characteristics; Baron Growth Fund invests primarily in small-sized companies believed to have attractive growth potential and strong management; Baron Small Cap Fund invests primarily in small-sized companies with attractive growth prospects at favorable prices; Baron Opportunity Fund invests primarily in companies that we think will benefit from technology advances; Baron Fifth Avenue Growth Fund invests in large-sized growth companies that we believe can double in size within five years; Baron Partners Fund is a non-diversified Fund that invests primarily in securities of U.S. growth companies; Baron Retirement Income Fund is a non-diversified Fund, which invests primarily in small and medium-sized growth companies, seeking capital appreciation; and Baron International Growth Fund primarily invests for the long term primarily in non-U.S. growth companies in both developed and developing countries. We annex printed materials consisting of detailed descriptions, fact sheets, and financial data for each fund for your reference.

The Specialty Occupation Position

We wish to employ Mr. Yang in the specialty occupation position of Financial Analyst at our office in New York, where he will be engaged in extensive analytical and financial-based research initiatives as it relates to international equities and evaluating company's investment potential. Specifically, he will analyze deep-value, growth-at-reasonable-price, event-driven investments, including spin-offs, leveraged re-capitalizations, strategic acquisitions, divestitures, and equity and debt repurchase plans. He will also analyze mergers and acquisitions, debt and equity capital market transactions using bottoms-up operational valuation, merger accretion, and capital structure modeling. In addition, Mr. Yang will perform comprehensive business modeling and financial due diligence, including analyzing company operations, management, and industry trends to develop complex modeling templates for industry specific analysis.

The position of Financial Analyst at our firm is a specialty occupation position normally requiring at least a Master's degree, or its equivalent, in Business Administration, Finance, or a closely related field. We impose this Master's degree requirement because the Financial Analyst must have advanced knowledge of the theories, principles and practices of corporate finance, financial research, business analysis, capital markets and investment, operations management, valuation/financial statements, applied value investing, security analysis, decision models, managerial economics and statistics, financial accounting and other topics normally studied in a Master's degree program in one of the areas listed above.

The Qualifications of the Beneficiary

Mr. Yang is well qualified for the professional position, having earned a U.S. Master of Business Administration degree from Columbia Business School in New York in May of 2008. We annex a copy of the academic certification from Columbia, confirming the conferral of Mr. Yang's Master of Business Administration degree, together with a course transcript, which confirms the completion of the following courses, all of which are directly related to the professional duties of the specialty occupation offered: Finance Master Class, Value Investing, Applied Value Investing, Corporate Finance, Operations Management, Earnings Quality, Security Analysis, Capital Markets & Investment, Decision Models, Global Economic Environment, Managerial Statistics, Accounting I – Financial, Managerial Economics, and Valuation/Financial Statements, among others. Mr. Yang was also awarded a Bachelor's degree in Economics from Jinan University in Guangzhou, People's Republic of China, in July of 2000.

In addition to his academic credentials, Mr. Yang has valuable professional industry experience. Since October of 2008, he has served as a Financial Analyst at BAMCO and performs the virtually identical analytical and financial-based research duties as those detailed above in the description of the specialty occupation position offered pursuant to F-1 optional practical training (OPT) status. We annex a copy of Mr. Yang's F-1 OPT employment authorization card (with validity from October 20, 2008 through July 20, 2009), as well as a copy of the corresponding Form I-20.

Prior to coming to the United States, Mr. Yang worked for KPMG Hong Kong on IPO and bankruptcy audits from 2000 to 2002. In 2003, he covered telecommunications for Roland Berger Strategy Consultants. From 2003 to 2006, Mr. Yang worked for Sam Lee Partners in Hong Kong covering Asian equities and special situations.

Accordingly, we request that you approve our H-1B petition with request for change of status for Siming Yang. Thank you for your attention to this matter.

Very truly yours,



Patrick M. Patalino
General Counsel

Exhibit M

KRAMER LEVIN NAFTALIS & FRANKEL LLP

MATTHEWS S. DUNN
SPECIAL COUNSEL
PHONE 212-715-9408
FAX 212-715-8185
MDUNN@KRAMERLEVIN.COM

April 28, 2009

VIA MESSENGER

~~Ms. Monika Swiatkowska~~
Law Clerk
BAMCO, Inc.
767 Fifth Avenue – 49th Floor
New York, NY 10153

Re: Approval of H-1B petition for Mr. Siming YANG

Dear Monika:

We are pleased to advise you that the U.S. Citizenship and Immigration Services (“USCIS”) has approved BAMCO, Inc.’s H-1B petition with a request for a change of status (from F-1 to H-1B) on behalf of Mr. Siming Yang. We enclose the original form I-797A approval notice that was sent to our office by the USCIS. The H-1B petition approval is valid from October 1, 2009 through September 7, 2012. **It is safest for Siming NOT to travel internationally prior to October 1, 2009. If he must, please call me to discuss. Please note that Siming’s H-1B status will be effective as of October 1, 2009.**

The USCIS has issued new I-94 departure records for Siming at the bottom right-hand portion of the enclosed I-797A approval notice. He should separate the I-94 card from the notice and staple it to his other I-94 (previously issued to him at his last entry to the United States), and then into his passport. Siming will need to give these I-94s to the airline when he next departs the United States. Despite the instructions on the form, we advise that Siming retain the rest of the approval notice (although BAMCO, Inc. should retain a photocopy of it). Siming should present the entire form I-797 (minus the I-94) when applying for his H-1B visa after October 1, 2009. BAMCO, Inc. should also retain for its files the approval notice sent directly to it by the USCIS (the courtesy copy issued without an I-94 departure record).

When Siming travels abroad and plans to re-enter the United States after October 1, 2009, he must apply at that time for an H-1B visa in order to be able to re-enter the United States in that status. He may obtain the H-1B visa at the U.S. Consulate in his home country (Guangzhou, P.R. China). The Guangzhou Consulate serves Hainan, Guangxi, Guangdong, and Fujian provinces. If he does not live in one of these four provinces, he should apply for the visa at the U.S. Embassy in Beijing or at one of our other Consulates in Shenyang, Shanghai, or Chengdu. If he would like to apply for the visa at any other U.S. Consulate, please contact our office first, as some posts have restrictive rules for visa issuance. **Please note that as a Chinese**

CONFIDENTIAL TREATMENT REQUESTED BC000140

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000 WWW.KRAMERLEVIN.COM

SEC-BC-0000031

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Ms. Monika Swiatkowska
April 28, 2009
Page 2

national, Siming will only be issued an H-1B visa in his passport for a three-month validity only (and only two entries within that period). It is, therefore, critical that Siming monitor the expiration and validity of his H-1B visa (upon his application after October 1, 2009) as this will affect his ability to re-enter the United States following any international travel. Following any international travel, Siming will need a valid H-1B visa in his passport in order to re-enter the United States in that status.

Please note that Consular posts must now receive electronic notification directly from USCIS before issuing visas, even when the applicant presents the original I-797 approval notice. USCIS will send the electronic confirmation of the approval via its Petition Information Management Systems (PIMS) database. Although PIMS confirmations are expected to be provided within 48 hours of a petition's approval date, applicants should be prepared for the possibility of a delay of more than two days to obtain a visa.

To apply in Guangzhou, Siming will be required to attend the U.S. Consulate in person for an interview with a consular officer. An appointment for an interview may be scheduled by calling the Visa Information Call Center 4008-872-333 (within Mainland China), or internationally 86-21-3881-4611. This is a user-pays service. To access the Visa Information Call Center, users may pay RMB 54 and receive a PIN number which is good for 12 minutes or they may pay RMB 36 and receive a PIN number which is good for 8 minutes. Siming may purchase a PIN at www.usavisainformation.com.cn or at a CITIC Bank branch office.

Prior to the interview, Siming will be required to pay a *non-refundable* application fee the equivalent of RMB 904, which is subject to change (US \$131). This fee must be paid at any designated branch of CITIC Industrial Bank, which can be found online at: <http://www.ecitic.com/bank/personal/chuguo/5.htm>. When Siming pays the application fee, CITIC Bank will provide a two-ply receipt. He must bring this receipt with him to the visa interview. The application fee is non-refundable and the two-ply receipt (one ply is white, the other light brown) should not be separated and must be submitted intact to the U.S. Consulate with the visa application.

In addition, Siming must complete visa application forms DS-156 and DS-157. Forms DS-156 and DS-157 should be completed on-line at: http://guangzhou.usembassy-china.org.cn/visa_application_form.html, using the enclosed, partially-completed forms as a guide. Please note, the online version of form DS-156 will contain a barcode when printed which will facilitate the visa issuance process. Siming should review the forms carefully and complete any missing information. If the answer to any question is "none" or "N/A", it should be stated on the forms as incomplete applications will be rejected by the U.S. Consulate. (Note: Form DS-156 will be replaced shortly by Form DS-160. Siming should continue to use Form DS-156 unless otherwise indicate by the U.S. Consulate's online instructions: http://guangzhou.usembassy-china.org.cn/how_to_apply.html.)

CONFIDENTIAL TREATMENT REQUESTED BC000141

SEC-BC-0000032

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Ms. Monika Swiatkowska
April 28, 2009
Page 3

At the interview, Siming will have to present the following: the original I-797A approval notice (enclosed); valid passport with at least two blank pages (to obtain entry to the United States until September 7, 2012, passport should be valid for at least six months beyond that date); signed and dated form DS-156 nonimmigrant visa application, with one recent 5cm x 5cm (full-faced view) color passport-style photograph attached; two completed DS-157 supplemental forms; the original bank receipt evidencing payment of the RMB 780 visa fee for the application (which must be paid prior to the interview at a branch of CITIC Industrial Bank); evidence that they reside in the Guangzhou consular district, including evidence of his ties to China; a current employment verification letter from BAMCO, Inc. confirming his ongoing employment, including annual salary; and all previous U.S. visas (even if expired). Siming's passport (with the visa) will be returned via Post Bureau courier or made available for direct pick-up at a local post office. He should be sure to confirm this process at the conclusion of his interview.

Siming should also have a set of the papers filed with the USCIS (enclosed) in his possession when he applies for the visa, but should not present it unless specifically asked to do so. We have enclosed further instructions on obtaining the visa as published on the U.S. Consulate's web site: http://guangzhou.usembassy-china.org.cn/how_to_apply.html. Siming should review this information carefully to become familiar with the process prior to making his application.

Alternatively, Siming may wish to process ^{his} ~~her~~ visa application at a U.S. Consulate in Canada. To do so, he must make an appointment at one of the U.S. Consulates by either calling 900-443-3131 or scheduling an interview over the internet at: www.nvars.com. Alternatively, he can use a Canadian lawyer that we have a relationship with who will set everything up and walk him through the process for a fee (call us if you are interested in this option). Once he has arranged the appointment, she will have to appear at the U.S. Consulate at the date and time of the scheduled interview with the above detailed documents. When making the appointment, ~~she~~ ^{he} should confirm what documents, in addition to the original approval notice, are required. ~~She~~ ^{He} should also confirm the methods of payment of the visa fee. In addition, please note, Chinese nationals require a Canadian visa in order to travel to Canada.

Please note, because Chinese nationals are issued visas with a shorter validity than that of the underlying approval notice, it is critical that Siming show his original approval notice (enclosed) with his H-1B visa upon re-entry to the United States. Prior to leaving the inspection station, he must make sure that the I-94 expiration date reflects the validity date of this approval notice (i.e., September 7, 2012), and NOT the shorter expiration date of his H-1B visa.

We also advise that Siming confirm at each entry to the United States (prior to leaving the inspection station) that the I-94 issued is endorsed with the correct immigration status and validity date (i.e., H-1B with BAMCO, Inc. through September 7, 2012).

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Ms. Monika Swiatkowska
April 28, 2009
Page 4

Please note that USCIS allows principals and dependents to "recapture" H-1B/L-1 nonimmigrant time spent outside the United States (dependents are still subject to the principal's maximum authorized period of stay). Any complete 24-hour day spent outside the U.S. can be added to the maximum period of stay for H-1B and L-1 nonimmigrants and their dependents. **It is therefore important to retain documentary evidence for the foreign national of his departures from, and arrivals to, the U.S. while in H-1B/L-1 status.** Such evidence may include copies of boarding passes, airline tickets, I-94 cards, and clear passport stamps. This evidence must be submitted with the petition to recapture H-1B/L-1 time.

We'd like to call your attention to two provisions of the law which are now being more rigorously enforced. First, a noncitizen must carry the original I-797A approval notice and original I-94 at all times as evidence of valid immigration status. Any family members must also carry their original I-797 approval notices and original I-94s. Please note that for certain nonimmigrant employees, a change in work location or position could trigger immigration consequences. Accordingly, you should contact us whenever either action is contemplated.

Additionally, all noncitizens are required to report a change of address to the USCIS within 10 days of moving. If he moves, Siming must file Change of Address Form AR-11 online at: <https://egov.uscis.gov/crisgwi/go?action=coa>. He should keep a print out of his AR-11, note the date it was filed, and provide a copy to our office for our records.

If you or Siming have any questions, please do not hesitate to call.

Very truly yours,



Matthew S. Dunn

MSD:ap
Enclosures

cc: Patrick M. Patalino, General Counsel
Kristine Treglia, Counsel

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

RECEIPT NUMBER [REDACTED]		CASE TYPE I129
RECEIPT DATE April 8, 2009		PETITION FOR A NONIMMIGRANT WORKER
PRIORITY DATE		PETITIONER BAMCO INC
NOTICE DATE April 13, 2009	PAGE 1 of 1	BENEFICIARY A137 733 004 YANG, SIMING
MATTHEW S. DUNN ESQ KRAMER LEVIN NAFTALIS [REDACTED]		Notice Type: Approval Notice Class: H1B [REDACTED]

The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, *Arrival-Departure Record*. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, *Application for Action on an Approved Application or Petition*, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (800) 375-5283
Form I797A (Rev. 09/07/93)N



PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE

Detach This Half for Personal Records

Receipt # [REDACTED]
I-94# [REDACTED]

NAME YANG, SIMING
CLASS H1B

VALID FROM 10/01/2009 UNTIL 09/07/2012

PETITIONER: B MCO INC
[REDACTED]
[REDACTED]
N W YORK NY 10153

392821047 18

Receipt Number EAC-09-133-50499

Immigration and
Naturalization Service

I-94

Departure Record Petitioner: BAMCO INC

14. Family Name YANG		16. Date of Birth 08/04/1976
15. First (Given) Name SIMING		
17. Country of Citizenship CONFIDENTIAL TREATMENT REQUESTED		BC000144

- Please save the upper portion of this notice for your records. Please enclose a copy if you have to write us or a U. S. Consulate about this case, or if you file another application based on this decision.
- You will be notified separately about any other applications or petitions you have filed.

Additional Information

GENERAL.

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

INQUIRIES.

You should contact the office listed on the reverse side of this notice if you have questions about the notice, or questions about the status of your application or petition. *We recommend you call.* However, if you write us, please enclose a copy of this notice with your letter.

APPROVAL OF NONIMMIGRANT PETITION.

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicates we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

APPROVAL OF AN IMMIGRANT PETITION.

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State National Visa Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse side of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the United States can apply for adjustment of status, please see Form I-485, *Application to Register Permanent Residence or Adjust Status*, or call our National Customer Service Center at 1-800-375-5283.

FORM I-94 ATTACHMENT.

The section of this notice below the perforation is a replacement Form I-94. After you have used this form to complete any necessary Form I-9, or other required documentation, tear off the bottom portion and give it to the alien. When you are looking at the front of the tear off, the alien should keep the right portion with his or her original Form I-94 and passport, if any, as evidence of the changes made to his or her status. A copy of it should be submitted with any subsequent application or petition.

The smaller portion on the left on the left of the tear off is for the alien to keep as a permanent record of this action. He or she should be advised to *not* keep this stub with his or her Form I-94. If he or she should ever lose the replacement Form I-94, a copy of this stub should be submitted with the application for a new replacement Form I-94.

Warning: A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important: Retain this permit in your possession; you must surrender it when you leave the U.S. Failure to do so may delay your reentry into the U.S. in the future. You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official;

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on Page 2 of Form I-20 prior to surrendering this permit.

Record of Changes

ALIEN'S PERMANENT RECORD

Port: Departure Record
 Date:
 Carrier:

CONFIDENTIAL TREATMENT REQUESTED BC000145

SEC-BC-0000036

Exhibit N

1 IN THE UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION

4 U.S. SECURITIES AND EXCHANGE
 5 COMMISSION,)

6 Plaintiff,)

7 vs.)

8 SIMING YANG, et al.,)

9 Defendants.)

Docket No. 12 C 2473

Chicago, Illinois
 January 8, 2014
 1:40 p.m.

10 VOLUME 4
 11 TRANSCRIPT OF PROCEEDINGS
 12 BEFORE THE HONORABLE MATTHEW F. KENNELLY

13 APPEARANCES:

14 For the Plaintiff: U.S. SECURITIES & EXCHANGE COMMISSION
 15 BY: MR. TIMOTHY S. LEIMAN
 16 MR. JONATHAN S. POLISH
 17 MR. JEDEDIAH B. FORKNER
 18 MS. EMILY A. HELLER
 19 175 West Jackson Boulevard
 20 Suite 900
 21 Chicago, Illinois 60604

22 For the Defendant: KOPECKY, SCHUMACHER & BLEAKLEY, PC
 23 BY: MR. JAMES L. KOPECKY
 24 MR. HOWARD J. ROSENBERG
 25 203 North LaSalle Street
 Suite 1620
 Chicago, Illinois 60601

LEINENWEBER, BARONI & DAFFADA, LLC
 BY: MR. JUSTIN L. LEINENWEBER
 MR. THOMAS M. LEINENWEBER
 203 North LaSalle Street
 Suite 1620
 Chicago, Illinois 60601

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
(312) 435-5785

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- 20
- 21
- 22
- 23
- 24
- 25

1 Q You were not hired by Baron Capital?

2 A I was hired by Baron Asset Management Company, BAMCO. I
3 call it Baron Asset Management Company.

4 Q Okay. On your payments, you're not hired by Baron
5 Capital, Inc.?

6 A My payment slip and my payment says my -- all the salaries
7 I was paid by BAMCO, not Baron Capital, Inc.

8 Q Are you aware that Baron Capital, Inc. is the parent
9 entity of BAMCO that you just described?

10 A No. I basically -- I signed a contract, and then I -- no.
11 I think this is the research arm of Baron, what I said, Baron
12 Capital, Inc.

13 Q Okay. And you were here when Mr. Patalino testified and
14 when Mr. Kass testified about Baron Capital, Inc. and your
15 employment there, and you're saying that they were incorrect;
16 is that fair to say?

17 A I don't know whether they say incorrect because I do not
18 have the -- I did not analyze the company structure. Because
19 we have a high umbrella organization, probably that's called
20 Baron Capital, Inc.

21 But it's my understanding and my paycheck, I was
22 employed and paid by BAMCO, Baron Asset Management Company.
23 That's pretty sure.

24 Q You're aware that Baron Capital, Inc. was a broker-dealer?

25 A I was not aware of that.

1 MR. LEIMAN: I'm sorry. I misspoke.

2 THE COURT: Okay.

3 BY MR. LEIMAN:

4 Q You understood the policies that were in the
5 questionnaires that are reflected on this page of Exhibit 19,
6 correct?

7 A Yes.

8 Q Now, I want to take a look at how one of those
9 affirmations turned out. But before we look at an example of
10 one of the certifications that you made, I just want to get a
11 few background facts.

12 You were the investment manager for an entity called
13 Prestige Trade Investments Limited, correct?

14 A I am the investment manager for Prestige Trade
15 Investments.

16 Q That was an investment entity that you helped create,
17 correct?

18 A Correct.

19 Q And you selected the investment strategy for Prestige
20 Trade Investments Limited, correct?

21 A Yes.

22 Q And you were Prestige's sole officer in 2012, correct?

23 A Yes.

24 Q And you were the sole employee of Prestige in 2012,
25 correct?

1 A Yes.

2 Q And Prestige had six investors who were shareholders,
3 correct?

4 A Including me, yes.

5 Q And those six investors in Prestige, they were not Baron
6 clients, correct?

7 A To the best of my knowledge, they don't invest in Baron
8 mutual funds.

9 Q And you met with prospective investors in Prestige in the
10 People's Republic of China in February 2012, correct?

11 A That's correct. Around February to -- by the end, like
12 mid to end February.

13 Q And after meeting in February of 2012, ultimately those
14 six investors combined to contribute \$30 million in
15 investments in Prestige, is that correct?

16 A 30 million was the initial commitment, that's correct.

17 Q As of March 2012, the contribution was \$30 million, is
18 that correct?

19 A Yes, that's correct.

20 Q And in March 2012, you spoke with an individual named
21 Maggie Shum about conducting trading for Prestige, is that
22 correct?

23 A That's correct.

24 Q And ultimately you gave instructions to Maggie Shum to
25 place trades for Prestige, is that correct?

1 A I gave sheet -- okay, she doesn't have any instructions.
2 She only needs my direction.

3 Q Well, you told her what stocks to buy, correct?

4 A That's correct.

5 Q And you told her how much to buy, correct?

6 A That's correct.

7 Q And starting on March 15th, 2012, Prestige started to buy
8 shares of a company called Zhongpin, is that correct?

9 A Can you repeat your question?

10 Q Sure.

11 On March 15th, 2012, Prestige started to buy stock in
12 Zhongpin, correct?

13 A That's correct.

14 Q And that was at your direction, correct?

15 A That's correct.

16 Q And this was less than two weeks before the CEO of
17 Zhongpin made a public announcement of an offer of a
18 management buyout of Zhongpin, is that correct?

19 A Yes.

20 Q And Prestige continued to buy Zhongpin stock from
21 March 15th, 2012, through March 23rd, 2012, is that correct?

22 A That's correct but incomplete.

23 Q You did --

24 Prestige did buy stock during that period, correct,
25 March 15th to March 23rd, correct?

Exhibit O

BACKGROUND INVESTIGATION CONSENT

I, Siming Yang hereby authorize Baron Capital, Inc. and/or its agents to make an independent investigation of my background, references, character, past employment, education, criminal or police records, including those maintained by both public and private organizations and all public records for the purpose of confirming the information contained on my Application and/or obtaining other information which may be material to my qualifications for employment.

I release Baron Capital, Inc. and/or its agents and any person or entity, which provides information pursuant to this authorization, from any and all liabilities, claims or law suits in regards to the information obtained from any and all of the above referenced sources used.

The following is my true and complete legal name and all information is true and correct to the best of my knowledge:

Siming YANG

Full Name Printed (Clearly)

Maiden Name or Other Names Used

[REDACTED] Presently Residing At [REDACTED] How Long? [REDACTED]

New York City/State 10025 Zip?

Former Address [REDACTED] How Long? [REDACTED]

City/State [REDACTED] Zip? [REDACTED]

August 4, 1976 *Date of Birth [REDACTED] Social Security Number [REDACTED] Driver's License Number [REDACTED] State of License [REDACTED]

Siming Yang Signature 10/28/2008 Date

**NOTE: The above information is required for identification purposes only, and is in no manner used as qualifications for employment. Baron Capital, Inc. is an Equal Opportunity Employer, and does not discriminate on the basis of Sex, Race, Religion, Age (40 and over), Handicap or National Origin.*

L:\NEW EMPLOYEE\BACKGROUND\CONSENT.DOC

CONFIDENTIAL TREATMENT REQUESTED BC000268

SEC-BC-0000159

Exhibit P

Baron Capital, Inc
Employee Questionnaire

Starting date at Baron Capital, Inc. 10/28/2008

Last Name: YANG First Name: Siming Middle Initial: _____

Maiden Name or Other Names Used: _____
Driver's License Number: _____ Driver's License State: _____

Date of Birth: [REDACTED] Social Security: [REDACTED] Marital Status: M D W

Present Address: [REDACTED]

How Long? 1yr Telephone: 646-784-6182 Fax: _____
e-mail: syang@baronfunds.com

Previous Address: _____
How Long? _____

Spouse's Name: _____ Date of Birth: _____
Social Security: 1/1/

Spouse's Employer: _____
Address: _____

Telephone: _____ Dependents: _____

1. Emergency Contact: Sikun Yang Telephone: 0086-20-8522-3962
Relationship: elder sister
2. Emergency Contact: _____ Telephone: _____
Relationship: _____

Medical Conditions or Medications we should know about? N/A

EMPLOYMENT HISTORY: Please fill out previous employment history for the last ten years

Employer & Full Address	Dates	Position	Supervisor/Contact	Phone #
Remius Capital Group	May 1st 2007 - May 1st 2008	Analyst	Peter Carter Xi-Guang Huang (HR)	312-844-845-7900 212

Sam Lee Partners	July 1st 2003 July 1st 2006	Senior Associate	Ms. Xu Ping (HR)	0086-15920367912
Roland Berger Strategic Consultants	July 10-2002 June 30, 2003	Consultant	HR	0086-010-8440-0088 0086-021-52986677
KPMG	July-2000 June-2002	Auditor	HR	0086 -020-87322832

For Questions 6-9, if answer is "yes", please provide details on back.

6. Have you ever been denied membership or registration or has any disciplinary action been taken or sanction imposed on you by any federal or state agency or any national securities exchange or association?
 yes no
7. Has the membership or registration of any broker-dealer with which you were associated in any capacity at the time you were so associated been denied, suspended or revoked?
 yes no
8. Have you or any broker-dealer with which you were associated at the time you were so associated been permanently or temporarily enjoined?
 yes no
9. Have you ever been arrested or indicted for any felony or misdemeanor pertaining to securities, commodities, banking, insurance or real estate, fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion?
 yes no
10. Have you ever been known by any other name? yes no
 If yes, specify: _____
11. Have you ever filed for bankruptcy or defaulted on a loan? yes no
 If yes, specify: _____

EDUCATION: List all educational institutions attended including professional schools, back to high school

Institution & Location	Dates Attended	Degree Attained
Master of Finance Beijing University	2002	Diploma
MBA, Columbia University	2006 - 2008	MBA
Master of Finance, Beijing University	2005 - 2006	M.A./diploma
Jinan University	1996 - 2000	B.A.

License(s), Certification Number (s) & Year(s)
Attained: _____

Affirmation:

I hereby affirm that the below name and signature is my true and legal name and all information contained in this document is true and correct to the best of my knowledge:

Siming Yang
Please Print Name
Siming Yang
Signature
10/28/08
Date

Exhibit Q

BARON CAPITAL, INC
OFFER LETTER/EMPLOYMENT AGREEMENT

July 7, 2008

Dear Siming,

I am pleased to extend to you an offer of employment at Baron Capital, Inc ("Baron Capital" or the "Firm"). We anticipate that you will begin employment at Baron Capital on August 1, 2008. You will be an Analyst, and you will work most directly with Michael Kass.

For the Firm's fiscal year 2008, your annualized total compensation will be [AMOUNT]. Your total compensation will consist of an annual base salary of [AMOUNT], pro-rated from your date of hire, paid in semi-monthly installments, and a year-end bonus of [AMOUNT] paid in cash. Your year-end bonus will be payable in March 2009, assuming satisfactory performance and conduct and that you remain employed through the end of the Firm's fiscal year, which is February. All payments are subject to applicable withholdings and deductions.

In addition to the foregoing, you will receive a one-time cash payment for moving expenses of [AMOUNT], less applicable withholding and deductions, payable with your first paycheck. This payment is contingent upon your joining the Firm.

You will be eligible for [NUMBER] weeks vacation for each calendar year.

As an Analyst, you will be uniquely positioned to advance the Firm's business interests. As a result, the Firm requires certain commitments from you in the event that you leave the Firm, so that the Firm can protect those business interests and ensure an orderly transition of business, responsibilities, and business relationships for the benefit of the Firm, our clients, our customers and our other employees. In summary, these commitments include that you (i) give the Firm at least 90 days advance written notice of your intention to resign; (ii) refrain from soliciting or hiring certain Firm employees for 180 days after you leave the Firm; (iii) refrain from soliciting certain clients and customers for 90 days after you leave the Firm; and (iv) abide by the standards and obligations set forth in the Firm's policies and procedures, including those relating to "Confidential Information," as that term is defined in the Baron Capital Employee Handbook ("Employee Handbook"). You will be required to acknowledge that you read and understand the Firm's Employee Handbook in connection with commencing employment.

In the course of your employment with the Firm, you may not make any unauthorized use of Confidential Information. Likewise, you may not bring onto Firm premises any Confidential Information, whether documents or other tangible forms, relating to your previous employer's business. When your employment is terminated, you may not take any Confidential Information belonging to Baron Capital with you when you leave the Firm.

This offer is contingent upon you obtaining a work visa prior to September 30, 2008. This offer is also contingent on a number of additional steps in the hiring process, including, but not limited to, background and reference checking. This offer is and remains subject to your complying with the Firm's policies and procedures and conditions of

CONFIDENTIAL TREATMENT REQUESTED BC000278

SEC-BC-0000169

employment. Your employment with the Firm will be "at will," which means that either you or the Firm may terminate your employment for any reason, at any time.

This offer constitutes the entire understanding and, along with the standards and obligations set forth in the Firm's policies and procedures and Employee Handbook, contains a complete agreement between you and Baron Capital and supersedes all prior or contemporaneous verbal or written agreements, understandings or communications. By signing and dating this offer letter in the area designated below and returning it to me, you acknowledge that you have read and understand this agreement and that you recognize that it creates binding obligations and sets forth terms and conditions of your employment with the Firm. You further acknowledge that you are subject to no contractual or other restriction or obligation that is inconsistent with your accepting this offer and employment and performing your duties. Please retain a copy of this letter for your records after you have signed it.

With the formalities covered, I am looking forward to you joining Baron Capital.

Best regards,

Linda S. Martinson
President and Chief Operating Officer

Offer Accepted and Agreed To by:

Name:
Signature:
Date:

CONFIDENTIAL TREATMENT REQUESTED BC000279

SEC-BC-0000170

Exhibit R

PERSONNEL	HOURS		EARNINGS		GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY		
	REG	OT	REG	OT	FEDERAL	STATE	FEDERAL	STATE				
YANG, SIMING File: 001174 Dept: 008002 Rate: 8250.00			8,250.00		8,250.00	1,435.56 FIT	358.75 NY 200.03 0022	3568.16	Y CHKNG	687.50	K 401(K)	Voucher# 110040 <input type="checkbox"/>
												.00

ADP Payroll Register

© 1998 Adorn # 10 Data Processing, Inc.

BARON CAPITAL INC
Company Code: -31

Batch: 5000-020 Period Ending: 03/15/2009 Week 11
Pay Date: 03/13/2009 Page 6

CONFIDENTIAL TREATMENT REQUESTED BC000221

SEC-BC-0000112

PERSONNEL	HOURS		EARNINGS		GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY				
	Reg	OT	Hours	Rate		Fed	State	Local	Other					
YANG, SIMING				8,250.00										
File: 001174					6,250.00	1,435.56	FIT	849.14	NY	3457.44	Y CHONG	687.50	K 401(K)	Voucher#
Dept: 008002								195.31	0022	113.10	T TRANCK	6.95	V DEN VI	C90041
Rate: 6250.00														

.00

ADP Payroll Register

© 1999 Adtech Data Processing, Inc.

BARON CAPITAL INC
Company Code: -31

Batch: 1309-020 Period Ending: 02/28/2009 Week 09
Pay Date: 02/27/2009 Page 6

CONFIDENTIAL TREATMENT REQUESTED BC0000222

SEC-BC-0000113

PERSONNEL	HOURS		EARNINGS			GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY						
	Reg	OT	Rate	Reg	OT		Reg	Stat	Total	Y		K					
YANG, SIMING File: 001174 Dept: 006002 Rate: 6250.00						6,250.00	1,435.56	FIT	356.75	NY	3566.18	Y	CHKNG	687.50	K	401(K)	Voucher# 070040
									200.03	0022							.00



Payroll Register

© 1994 Adia Data Processing, Inc.

BARON CAPITAL INC
Company Code: -31

Batch: 7052-020 Period Ending: 02/15/2009 Week 07
Pay Date: 02/13/2009 Page 6

CONFIDENTIAL TREATMENT REQUESTED BC000223

SEC-BC-0000114

PERSONNEL	HOURS		EARNINGS		GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS			NET PAY						
	Reg	OT	Rate	Hours		Reg	OT	Federal	State	Local	Y	T	K	V	Voucher#		
YANG, SHING			6,250.00														
File: 001174					6,250.00		1,435.56	FIT	349.14	NY	3457.44	Y	CHKNG	687.50	K 401(K)		
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Rate: 6250.00																950041	
																	.00



Payroll Register

BARON CAPITAL INC
Company Code: -31

Batch: 2458-020 Period Ending: 01/31/2009 Week 05
Pay Date: 01/30/2009 Page 6

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CONFIDENTIAL TREATMENT REQUESTED BC000224

SEC-BC-0000115

PERSONNEL	HOURS	EARNINGS	GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS			NET PAY	
				Fed	State					
YANG, SIMING		6,250.00	6,250.00	1,435.66	358.75	3566.16	Y CHKNG	687.50	K 401(K)	Voucher# 024041 <input type="checkbox"/>
File: 001174 Dept: 005002 Rate: 6250.00					200.03.0022					.00



Payroll Register

01 Web Automatic Data Processing, Inc.

BARON CAPITAL INC

Company Code: -31

Batch: 6530-020 Period Ending: 01/15/2009 Week 02

Pay Date: 01/15/2009 Page 8

CONFIDENTIAL TREATMENT REQUESTED BC0000225

SEC-BC-0000116

PERSONNEL	HOURS		EARNINGS	GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS			NET PAY					
	Reg	OT			Reg	OT	Federal	State	Y		V	K			
YANG, SIMING			6,250.00												
File: 001174				6,250.00	1,435.56	FIT	382.14	NY	3597.82	Y	CHKNG	645.83	K	401(S)	Voucher#
Dept: 006002							201.70	0022	6.95	V	DEN VI				510040
Rate: 6250.00															.00



Payroll Register

BARON CAPITAL INC
Company Code: -31

Batch: 1097-020 Period Ending: 12/31/2008 Week 51
Pay Date: 12/31/2008 Page 6

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CONFIDENTIAL TREATMENT REQUESTED BC0000226

SEC-BC-00001-17

PERSONNEL	HOURS		EARNINGS		GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY	<input checked="" type="checkbox"/>	
	Reg	O/T	Reg	O/T		Fed	State/Local					
YANG, SIMING					5,000.00	B						
File: 001174					5,000.00							
Dept: 006002							.00	FIT		5000.00	A ADVNG	Adjustment <input type="checkbox"/>
Rate: 6250.00												Void
												.00
Dept: 006002					6,250.00							
Rate: 6250.00					6,250.00							
							1,435.56	FIT	352.14	NY		
									3604.77	Y CHKNG	645.88	K 401(Q)
												Voucher# <input type="checkbox"/>
												500040
												Pay 2 <input type="checkbox"/>
												.00



Payroll Register

©1997 ADP, a division of Data Processing, Inc.

BARON CAPITAL INC
Company Code: -31

Batch: 7364-020 Period Ending: 12/15/2008 Week 50
Pay Date: 12/15/2008 Page 6

CONFIDENTIAL TREATMENT REQUESTED BC000227

SEC-BC-0000118

PERSONNEL	HOURS		EARNINGS			GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY
	Reg	OT	Hours	Rate	OT Earnings		Federal	State/Local			
YANG, SIMING						8,338.93					
File: 001174											
Dept: 008002						8,338.93	2,081.97 FIT	628.06 NY	645.83 K 401(K)		Check# 810 <input type="checkbox"/>
Rate: 6250.00								285.03 0022			4,798.04

ADP Payroll Register

BARON CAPITAL INC
Company Code: -31

Batch: 7902-020 Period Ending: 11/15/2008 Week 46
Pay Date: 11/14/2008 Page 6

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CONFIDENTIAL TREATMENT REQUESTED BC0000228

SEC-BC-0000119

Exhibit S

FORMS

OFFICE COPY

Employee Acknowledgement Form

READ AND SIGN IMMEDIATELY

I have received the Baron Capital, Inc. Employee Handbook (the "Handbook").

- I agree to comply with all the Policies and Procedures of the Company including all Policies and Procedures stated in the Handbook.
- I understand it is my responsibility to read the Handbook carefully and, if I do not understand any portion of it or if I have any questions not answered by the Handbook, I should consult the COO.
- I acknowledge that revisions to the Handbook may occur in the Company's sole discretion with or without prior notice to me.
- I acknowledge that this Handbook is not a contract of employment for a specific duration. Accordingly, either I or the Company can terminate the employment relationship at will, with or without cause, at any time.

Siming Yang
EMPLOYEE'S NAME (printed)

Siming YANG
EMPLOYEE'S SIGNATURE

11/15/08
DATE

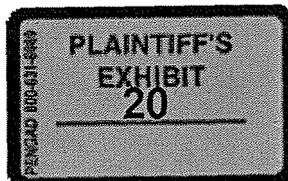


Exhibit T

DATED: _____ 2012

PRESTIGE TRADE INVESTMENTS LIMITED
(名實投資有限公司)

and

YANG SIMING (杨思明)

SERVICE CONTRACT

P Exhibit 17
Deponent Xiao Fei
Date 12/14/12 Rptr MS
Merrill Corporation
www.merrillcorp.com



Confidential--Subject to Protective Order Prestige 001026

CONTENTS

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SERVICE CONTRACT

Dated 2012

BETWEEN:

- (1) **PRESTIGE TRADE INVESTMENTS LIMITED (名貿投資有限公司)** a company duly incorporated with limited liability under the laws of the British Virgin Islands (under company registration number 1691631) having its principal place of business situate at _____ (the "Company"); and
- (2) **YANG SIMING (杨思明)**, a director of the Company, with PRC identity card number (中华人民共和国居民身份证号码): _____ whose address is at _____ (the "Manager").

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions shall (except where the context otherwise requires) have the following meanings:

- "Amount of Absolute Return" means the value of all investments held by the Company determined by their respective closing price on the business day immediately before the date of determination less the aggregate amount of all subscriptions by Shareholders as at the date of determination;
- "Appoint" shall have the meaning given to it in Clause 2.1;
- "Business" means the investment and divestment of, and related activities concerning, the Investments;
- "Board" the board of directors of the Company or the directors present at any meeting of the Board duly convened and held;
- "Commencement Date" the date of this Agreement;
- "Directors" mean the directors for the time being of the Company;
- "HK\$" The lawful currency of Hong Kong;
- "Hong Kong" the Hong Kong Special Administrative Region of the People's Republic of China;

“Investments”	means (i) equity securities of Chinese companies; and (ii) options and warrants (but not futures or other derivatives) in respect of those equity securities, that are listed or having its price quoted on The New York Stock Exchange, the NASDAQ Stock Market or The Hong Kong Stock Exchange, provided always that no real estate companies shall form any part of the Target Investments;
“Investment Team”	means the persons under the management of the Manager for the purpose of performing the Company’s Business;
“Rate of Absolute Return”	means the Amount of Absolute Return divided by the aggregate amount of all subscriptions by Shareholders as at the date of determination, multiplied by 100;
“Shareholders”	means the shareholders of the Company for the time being;
“Shareholders Agreement”	means the shareholder agreement entered by the Shareholders and the Manager dated _____;
“US\$”	The lawful currency of the United States of America; and
“Working Day”	a day other than a Saturday, Sunday or other public holiday in Hong Kong.

- 1.2 Reference to a financial year means a financial year of the Company.
- 1.3 In this Agreement, words importing the masculine gender only include the feminine and neuter genders and words importing the singular number only include the plural and vice versa.
- 1.4 Unless otherwise stated, references to Clauses, sub-clauses and the Schedule are references to Clauses and sub-clauses of and the Schedule to this Agreement. The Schedule forms an integral part of this Agreement.
- 1.5 The Clause headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.6 References to persons shall include bodies corporate, unincorporated associations and partnerships.

1.7 References to the parties hereto include their respective successors in title, permitted assigns and legal personal representatives.

2. APPOINTMENT

2.1 The Company hereby appoints the Manager with effect from the Commencement date, and the Manager hereby accepts the appointment with effect from such date, to manage the Business and to carry out valuations of the Investments from time to time and to perform other related duties and functions, for the period and on the terms as set out in this Agreement (the "Appointment").

2.2 The Manager warrants, represents and undertakes to the Company that by entering into this Agreement and performing his duties under it he shall not be in breach of any contract or other obligation binding on him.

3. TERM OF APPOINTMENT

Unless terminated according to Clause 9, the Appointment shall commence upon the Commencement Date, and shall continue until _____.

4. POWERS AND DUTIES OF THE MANAGER

4.1 The Manager shall have the full delegated power from the Board in relation to the development and implementation of strategies to enhance the investment return or reduce the investment risk of any Investment.

4.2 The Manager shall have absolute discretion and support of the Board to recruit, supervise and manage an Investment Team (if so required) in managing the business and operations of the Company.

4.3 The Manager shall be empowered to exercise any rights, authorities, powers or discretions of the Company pursuant to the course of the Business.

4.4 The Manager shall investigate, select, engage, conduct relations, structure, negotiate, purchase and dispose of Investments without the prior consent of the Board or any Shareholder insofar as the action complies with the Business and the scope of the Investments.

4.5 The Manager shall monitor the performance of the Investments and, where appropriate, provide advice to the Board;

4.6 The Manager shall convene and hold a formal meeting of the Board at least once in every period of six (6) months to comprehensively report on investment results of the Company and to provide any advice and recommendations to the Board on matters of investment as the Board shall require.

4.7 The Manager shall obtain or provide such services as may be required to administer the operations of the Investments, including, but not limited to, transactions, delivery, registration, booking and auditing of accounts.

- 4.8 The Manager shall be responsible for all costs and expenses (including salary expenses) of and relating to the employ or otherwise retention of the Investment Team.
- 4.9 The Manager shall be responsible for the administrative, operational, keeping of premises of the Company and all costs and expenses of and relating to that, including, but not limited to, all management, accounting and miscellaneous expenses and disbursements.
- 4.10 The Manager shall, and shall procure the Investment Team to, use all best efforts to promote and protect the interests of the Company and shall not do anything which is harmful to those interests.
- 4.11 The Manager shall, and shall procure the Investment Team to, diligently and faithfully perform such duties and exercise such powers as may from time to time be assigned to or vested in it in relation to the conduct and management of the affairs of the Company. In the event the Manager (or the Investment Team) is guilty of serious misconduct or in serious breach of this Agreement, the Board may suspend the Manager and all or any member of the Investment Team's duties and powers for such periods and on such terms as the Board considers expedient.
- 4.12 The Manager shall give to the Company such information regarding the affairs of the Company as it shall require and shall comply with all reasonable and lawful instructions of the Board according to the best of his skill and ability.
- 4.13 The Manager (and any Investment Team member) shall (unless prevented by ill-health or accident or otherwise directed by the Board and except the period when the Manager (or any Investment Team member) is on annual leave) devote the whole of his time during normal business hours from 9:00 a.m. to 6:00 p.m. Monday to Friday (inclusive) to the duties of the Appointment and such additional time as may be necessary for the proper fulfillment of those duties.
- 4.14 The Manager (and any Investment Team member) shall not continue in or accept any appointment to any office in relation to any body, whether corporate or not, or directly or indirectly be interested in any manner in any other business except with the consent in writing of the Company, which may be given subject to any terms or conditions which the Company may require.

5. PLACE OF PERFORMANCE

The duties of the Appointment shall be at _____ but extend to travel abroad from time to time when required by the Company.

6. REMUNERATION

- 6.1 In consideration of the services to be provided by the Manager, the Company shall pay to the Manager on the first day of each quarter of the financial year a salary amounting to 0.5% of the net asset value of the Investment as calculated using the relevant closing prices of the Investments on the

immediate preceding business day. For the avoidance of doubt, the first such salary payment shall occur on the first day of the _____ quarter of 2012.

- 6.2 In addition, the Manager shall be entitled to a bonus semi-annually on the basis and in the amount as calculated as follows:

Criteria	Bonus Amount
Rate of Absolute Return is less than 10%	Zero
Rate of Absolute Return is more than 10% but less than or equals to 30%	20% of the Amount of Absolute Return.
Rate of Absolute Return is more than 30%	30% of the Amount of Absolute Return.

Payment under this Clause 6.2 shall be made as soon as possible after determination of the above sum.

- 6.3 Without prejudice to any other rights or remedies of the Company and if the annual leave entitlement of the Manager has been fully taken up, the Company may deduct the equivalent amount of daily remuneration from the salary of the Manager for every day of absence from employment without the prior permission of the Company.
- 6.4 The Manager shall be responsible for, and shall indemnify the Company in respect of, the payment of all income tax, salaries tax and any other form of taxation in respect of all payments payable to the Manager pursuant to this Clause 6.
- 6.5 On termination of the Appointment, save and except any payments accrued to the Manager under this Agreement (including but not limited to salary and annual leave entitlements not taken at the date of termination of the Appointment), the Manager shall cease to have any further entitlements under this Clause 6.

7. LEAVE

- 7.1 The Manager shall (in addition to Saturdays, Sundays and public holidays) be entitled to ~~fourteen~~ Working Days' annual leave with pay in every calendar year during the term of the Appointment at times convenient to the Company.

8. CONFIDENTIAL INFORMATION

- 8.1 The Manager (and the Investment Team) shall not make use of or divulge to any person, and shall use his best endeavours to prevent the use, publication or disclosure of, any information of a confidential or secret nature:-
- 8.1.1 concerning the business of the Company and which comes to his knowledge during the course of or in connection with his employment from any source within the Company; or

8.1.2 concerning the business of any person having dealings with, the Company and which is obtained from any person outside the Company who has required the Company to keep any such information confidential.

8.2 The restrictions contained in this Clause 10 shall not apply to information to the extent it:-

8.2.1 is used or disclosed in the proper performance of the Manager's duties or with the prior written consent of the Company; or

8.2.2 is ordered to be disclosed by a court of competent jurisdiction or otherwise required to be disclosed by law; or

8.2.3 becomes public knowledge other than through a breach of the provisions of this Clause 10 by the Manager; or

8.2.4 is disclosed by the Manager to his legal and professional advisers for the sole purpose of advising the Manager terms of this Agreement and the Shareholders Agreement.

8.3 This Clause 10 shall continue to apply after the termination of the Appointment (whether terminated lawfully or not) without limitation in point of time.

8.4 Each of the restrictions set out in this Clause 10 shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any of those restrictions is void but would be valid if some part of the restriction were deleted, the restriction in question shall apply with such modification as may be necessary to make it valid.

9. TERMINATION OF APPOINTMENT

9.1 Notwithstanding any other provision of this Agreement, if the Manager is unable properly to perform his duties by reason of ill health, sickness, injury, accident or otherwise for a period of or periods aggregating at least 90 Working Days in any period of 12 consecutive months, the Company may terminate the Appointment by giving not less than three months' notice in writing to the Manager at any time after the end of any period or periods of such disability, provided that if at any time during the subsistence of a notice given pursuant to this Clause 9.1, the Manager shall provide a medical certificate satisfactory to the Board to the effect that he has fully recovered his physical health and that no recurrence of illness or incapacity can reasonably be anticipated, the Company shall withdraw such notice.

9.2 Notwithstanding any other provision of this Agreement:

9.2.1 the Manager shall be entitled to terminate the Appointment by giving the Company one month's notice in writing if:

9.2.1.1 the Manager is removed from the office of Director pursuant to Clause 9.7; or

- 9.2.1.2 there is a material change in the nature of Business of the Company.
- 9.2.2 the Manager shall be entitled to terminate the Appointment with effect from a date not earlier than _____ subject to the provision of prior written notice of three months.
- 9.3 Notwithstanding any other provision of this Agreement, the Company shall be entitled to terminate the Appointment with immediate effect without any compensation to the Manager by notice in writing, if the Manager shall at any time:-
- 9.3.1 have committed any dishonest, fraudulent or illegal act that is materially detrimental to the Business; or
- 9.3.2 have committed any material or serious breach of any of the provisions of this Agreement or the Shareholders' Agreement, and to the extent that such breach is capable of remedy shall fail to remedy such breach within 30 days after written notice is given by the Board; or
- 9.3.3 have committed any persistent breach of any of the provisions of this Agreement or the Shareholders' Agreement (as the case may be) (and for these purposes a breach shall be treated as a persistent breach if the Board has given a series of three written notices specifying the facts supporting the alleged breach, each notice being issued at intervals of more than 10 days, and such breach is not remedied within 30 days after the third notice); or
- 9.3.4 become bankrupt or have a receiving order made against him; or
- 9.3.5 become a lunatic or of unsound mind or suffer from other mental disorder as certified by a medical practitioner.
- 9.4 The Company is entitled to suspend any of the Manager's duties and powers during any period after notice of termination of the Appointment has been given by the Manager pursuant to this Clause. Throughout any such period of suspension the Manager's salary and other benefits to which he is entitled under this Agreement shall continue to be paid or provided by the Company. At any time during such period the Manager shall, at the request of the Board, immediately resign from office as a director of the Company and any other Company and from any other office held by him in the Company or any other Company.
- 9.5 On the termination of the Appointment in any way (whether lawfully or otherwise), the Manager shall immediately:-
- 9.5.1 resign all offices held by him in the Company (without prejudice to the rights of any party arising out of this Agreement or the termination of the Appointment); and
- 9.5.2 deliver to the Company all property in his possession, custody or under his control belonging to the Company including (but not limited to) security and computer passes; all business cards, credit and charge cards and car and other keys issued or given to him by any Company and all original and copy

documents or other media in his possession on which information is held relating to the business or affairs of any Company.

- 9.6 If the Manager does not resign any office held by him in any Company when required to do so under this Agreement, the Company is irrevocably authorized to appoint some person in his name and on his behalf to do all such things and execute all such documents as may be necessary for or incidental to giving effect to his resignation of that office.
- 9.7 With effect from the termination date, all the rights and obligations of the parties under this Agreement shall cease except for those which are expressed to continue after that date and except in relation to any breach of this Agreement before that date. Termination of the Appointment under any provisions of this Agreement shall not prejudice any other rights or remedies of the Company or the Manager under this Agreement or other applicable laws and regulations.

10. ACKNOWLEDGMENT OF NO CLAIMS

With effect from the Commencement Date, all other agreements and arrangements (if any) between the Manager and the Company relating to the employment of the Manager shall cease to have effect and neither party shall have any claims on any account whatsoever against the other in respect thereof. The Manager hereby acknowledges that he has no claim of whatsoever nature against the Company or any of his previous employers or any other member of any group of companies of which any previous employer is a member.

11. NOTICES

Any notice to be given pursuant to the terms of this Agreement shall be given in writing to the party due to receive such notice (in the case of a company) at its address from time to time or such other address as may have been notified for the purpose to the other party hereto in accordance with this Clause. Notice shall be delivered personally or sent by first class pre-paid recorded delivery or registered post (air mail if overseas) or by facsimile transmission and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (6 days if sent by air mail) and in the case of facsimile transmission on completion of the transmission. Provided that the sender shall have received printed confirmation of transmission.

12. ASSIGNABILITY

Neither party may assign the benefits or the obligations under this Agreement without the other party's prior written consent.

13. NO PARTNERSHIP OR JOINT VENTURE

None of the provisions of this Agreement shall be deemed to constitute a partnership or joint venture between the parties for any purpose.

14. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby submit for all purposes relating to this Agreement to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS WHEREOF the parties or their duly authorised representatives have executed this Agreement on the day and year first above-written.

SIGNED by)
duly authorised for and on behalf of)
PRESTIGE TRADE INVESTMENTS)
LIMITED)

SIGNED by YANG SIMING (杨思明))

14. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby submit for all purposes relating to this Agreement to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first above written.

SIGNED by
[Signature]
Duly authorized for and on behalf of
PRESTIGE TRADE INVESTMENTS
LIMITED

SIGNED BY [Signature]

P Exhibit 18
Deponent X.ao Fei
Date 12/11/12 Rptr JTB
Merrill Corporation
www.merrillcorp.com



Exhibit U

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SIMING YANG, PRESTIGE TRADE
INVESTMENTS LIMITED, CAIYIN FAN,
and SHUI CHONG (ERIC) CHANG,

Defendants.

No. 12-cv-02473

Hon. Matthew F. Kennelly

RESPONSE BRIEF TO PLAINTIFF'S REMEDIES MOTION

Defendant Siming Yang ("Yang"), through his attorneys, Kopecky Schumacher Bleakley Rosenberg, PC, responds to the SEC's Motion for Remedies and Final Judgment as follows:

OVERVIEW

The SEC has asked this Court to impose maximum monetary penalties, a permanent injunction, disgorgement and pre-judgment interest. All are unwarranted. In considering imposing remedies, this Court should consider the following:

- Yang received no profits.
- No investors were harmed.
- Prestige, the only purported victim, has asked this court not to sanction Yang.
- The jury verdict, in and of itself, imposes a severe penalty on Yang.
- Yang's reputation has been damaged from media reports on the insider trading charges.
- No similar cases have resulted in a permanent injunction.
- Yang does not pose a threat to investors.
- The violations relate to an isolated incident.

DISCUSSION

I. An Injunction in this case is wholly inappropriate.

An injunction in this case is wholly inappropriate. This case does not involve a Ponzi scheme, insider trading or some other investment scam. This case does not involve a multiyear (or even a multi-month) fraud. This case does not involve repeated instances of misconduct. This case does not involve numerous money-losing customers—or even one money losing customer.

This case involves front-running and filing an inaccurate Schedule 13D. The front-running involves one instance, with one stock, with one purported victim. That “victim” suffered no damages and is beseeching this Court not to punish Yang. (See letters from Prestige shareholders translated into English, followed by original Chinese, attached as “Exhibit A.”) The front-running resulted in no profits to Yang and caused Prestige no damages. In fact, Prestige’s Zhongpin purchases on March 15 were at a *lower* average price than the SogoTrade purchases on March 14.

The inaccurate filing claims do not involve a failure to file a Schedule 13D that informs the market of an investor taking a large stock position. It does not involve the untimely filing of a Schedule 13D, such that it would allow the buyer to gain a market advantage. Here, Prestige filed the Schedule 13D in a timely manner, accurately disclosing its Zhongpin purchases and intentions. The Schedule 13D made Prestige’s endeavors known to the marketplace loudly, clearly and accurately.

The Schedule 13D misconduct involves the “notes” section to the schedule, where the SogoTrade purchases were not disclosed. Those purchases reflected less than 1% of Zhongpin stock if the options are included in the calculation, and one tenth of one percent if the options are not included in the calculation. Given that Prestige’s purchases and intentions were timely and

accurately conveyed to the marketplace, the failure to include the SogoTrade account's relatively small additional purchases could not have in any way impacted the marketplace.

While the SEC may point to other fraud cases or even other front-running or false forms cases where an injunction has been imposed, there is no set of facts like these where a court has imposed an injunction. An injunction in this case would be an extreme and unwarranted outlier.

A. An Injunction would unduly penalize Yang.

An injunction is a "drastic remedy." *Aaron v. SEC*, 446 U.S. 680, 703 (1980) (Burger, C.J., concurring), which is reserved for repeat offenders who—unlike Yang—have engaged in a pattern of securities law violations or whose conduct is such that unless enjoined, they present an ongoing threat to the investing public. *See SEC v. Lorin*, 76 F.3d 458, 461 (2d Cir. 1996.)

The effect of an anti-fraud injunction goes far beyond the words on the face of the injunction itself. The imposition of the injunction significantly impairs the subject of the injunction's ability to conduct any financial transactions forever after. This implicates more than Yang's ability to work in the financial services industry, which, as discussed below, has been effectively closed off by the jury's verdict alone.

The injunction goes much further. It impairs the subject's ability even to hold an account at a financial institution, whether a bank deposit account or an investment account at a securities broker-dealer or investment adviser. It also impairs the subject's ability to take out a loan. While the language of the injunction does not prohibit these interactions, banks and other financial institutions frequently will not accept as customers those subject to an anti-fraud injunction. Moreover, they frequently terminate relationships with current customers once an injunction is imposed.

As part of their regulatory obligations, banks and other financial institutions run background checks on current and prospective customers. To the extent the jury verdict itself

does not already land someone on the blacklist, the anti-fraud injunction certainly does. Indeed, it is not uncommon for a bank to find in default a borrower who is otherwise in compliance with the terms of a loan, but who has become the subject of a securities anti-fraud injunction. The effect of such an injunction is devastating and not warranted in this case.

An injunction is by no means automatic. Courts exercise independent judgment to determine whether the SEC has made a proper showing for an injunction. *SEC v. Globus Group, Inc.*, 117 F. Supp.2d 1345, 1349 (S.D. FL 2000.) Courts across the country have denied the SEC's request for an injunction despite findings of violations of the federal securities laws' anti-fraud provisions. See e.g. *SEC v. Pros Int'l*, 994 F.2d 767 (10th Cir. 1993) (injunction denied where defendant issued a false and misleading opinion about a company's financial statements); *SEC v. Sargent*, 329 F.3d 34, 38 (5th Cir. 2003) (no injunction imposed in an insider trading case); *SEC v. Caterincchia*, 613 F.2d 102, 206 (5th Cir. 1980) (false filings case where court denied injunction noting SEC did not prove defendant's character made him likely to violate laws in the future); *Globus*, 117 F. Supp.2d at 1349; *SEC v. Nat'l Student Mktg. Corp.*, 457 F. Supp. 682, 716 (D.D.C. 1978) (insider trading case where court denied injunction, noting the isolated nature of the violations); *SEC v. Dunn*, 2012 WL 3096646 *3-*4 (D. NV. Jul. 30, 2012) (defendant was a tipper in an insider trading case where court did not impose an injunction even though it found a high degree of scienter); *SEC v. Perez*, 2011 WL 5597331 *3-*5 (S.D. FL, Nov. 17, 2011) (insider trading case where even though the violation was not isolated in nature, the court did not impose an injunction, noting no financial loss to others, that prior to the present matter, defendant had no history of violating securities laws, and the impact of the investigation was severe); *SEC v. Snyder*, 2006 WL 6508273 *5 (S.D. TX. Aug. 22, 2006) (insider trading and misleading Form 10-Q case where court noted defendant had the necessary scienter and did not

recognize his wrongfulness, but that the violations were isolated and there was little risk of repeated offenses); *SEC v. Ingoldsby*, 1990 WL 120731 *3 (D. MA. May 15, 1990) (insider trading case where court did not impose an injunction, noting that even though defendant had scienter, it was an isolated event and there were no prior or subsequent violations).

B. There is no likelihood of future violations of the federal securities laws.

To impose an injunction, there must be “positive proof of the likelihood that the wrongdoing will recur.” *SEC v. Blatt*, 583 F.2d 1325, 1334 (5th Cir. 1978); *SEC v. Commonwealth Chem. Sec. Inc.*, 574 F.2d 90, 99 (2d Cir. 1978). Here, there is nothing that indicates any likelihood of future violations. Yang has no securities licenses. The jury verdict alone will virtually prohibit Yang from ever working in the financial services industry. Even if it did not, the tremendous price Yang has paid, both literally and figuratively, is disincentive enough from ever again coming anywhere near a possible violation of the federal securities laws.

Yang is not living in the United States and does not plan to live in the United States. Even if he could—a visa is questionable based on the jury’s verdict alone—he has no desire to ever trade in US securities, in any securities traded on US exchanges, or service any clients in the US. Thus even if theoretically Yang somehow were able to work in the Chinese financial services industry, he would not run afoul of the US securities laws.

Most importantly, Yang understands and respects the US securities laws and he respects the jury’s verdict. Certainly this case has taught him many expensive lessons. There is not a likelihood of future violations.

1. *The wrongdoing is of an isolated nature.*

The misconduct is of an isolated nature. There is no pattern of misconduct. Prior to this case, Yang had no history of securities law violations (or any law violations, for that matter).

Additionally, in the two years that have passed since the SEC brought its case, Yang has not been involved in any law violations.

The front-running activities at issue relate the accumulation of the securities of one company over the course of one twenty four hour period. The inaccurate filings involve one disclosure and its virtually identical amendment (but for the number of shares), both of which accurately disclosed Prestige's interest in Zhongpin but did not include the additional shares in the SogoTrade account. This too, is an isolated incident.

2. *No investors were harmed.*

The violations in this case did not result in harm to any investors. This is not a Ponzi scheme case. Yang did not abscond with investor funds. Neither the inaccurate filing, nor the front-running, harmed any investors.

3. *The Section 13(d) violation harmed nobody.*

Regarding the Section 13(d) case, the SEC's analysis about injuring other market participants by keeping Zhongpin's price artificially low is flat out wrong. The information central to the Schedule 13D was accurate. Section 13(d) requires anyone who acquires more than five percent of a class of stock in a company to disclose it in the Schedule 13D. The purpose behind the Section 13(d) is to prevent buyers from surreptitiously acquiring large volumes of stock without informing the marketplace. *SEC v. Teo*, —F.3d— (3rd Cir. Feb. 10, 2014.)

In this case, the purpose of Section 13(d) was fulfilled. Prestige acquired more than five percent of Zhongpin stock. Prestige accurately disclosed that information on the Schedule 13D and its amendment. True, Schedule 13D also provides for the disclosure of additional information, such as whether any of Prestige's beneficial owners—in this case Yang—also

purchased the same class of securities within sixty days. The Zhongpin shares in the SogoTrade account were not disclosed. But the failure to include that information, particularly given the facts of this case, deprived nobody in the marketplace of any relevant information.

That is because the additional shares purchased in the SogoTrade account would have no impact on the buying or selling decisions in the marketplace. In March 2012, there were approximately 37 million shares of Zhongpin. Prestige's 2,256,012 shares constituted approximately 6% of those shares. (March 22, 2012 Schedule 13D, attached as "Exhibit B.") Because of that disclosure, anyone considering purchasing or selling Zhongpin shares could consider Prestige's disclosure that it was a large owner of Zhongpin stock and planned to engage Zhongpin management, its board and other stockholders regarding the business, management, operations, assets, capitalization, financial condition, governance, strategy and future plans of Zhongpin. (*Id.*, Item 4.) The Zhongpin securities in the SogoTrade account that were not disclosed represented less than one percent of Zhongpin securities if the options are included, and just over one tenth of one percent of Zhongpin securities if the options are not included.

This is not a case where the SogoTrade shares were being hidden from the marketplace to artificially depress the price of Zhongpin stock. The failure to disclose the relatively small percentage of shares in the SogoTrade account could not possibly have harmed the investing public given that all the information about a much larger shareholder seeking to engage Zhongpin management already was disclosed. Indeed, this violation was nothing more than technical. The jury may have found that Yang violated Section 13(d), but he certainly did not violate the public policy behind the rule.

The cases the SEC cites undermine the SEC's arguments and demonstrate the true point and policy behind filing a Schedule 13D. The SEC cites to *SEC v. First City Financial Corp.*,

Ltd., to support its claim about harm to the marketplace due to Section 13(d) violations. 890 F.2d 1215 (D.D.C. Cir. 1989.) The facts in *First City* could not be more different from the facts here. There, a buyer of more than five percent of a company's stock did not file its Schedule 13D in a timely manner, which allowed the buyer to hide from the marketplace its plans to seek to take over the company. *Id.*, at 1217-21. That deception prevented information about the takeover plan from entering the marketplace, resulting in a lower stock price. *Id.*, at 1230.

Compare those facts to the facts here. Here, Prestige disclosed its large holdings in Zhongpin stock and its intentions to engage the company. The small batch of additional shares in the SogoTrade account did not serve the purpose of hiding any relevant event from the marketplace. In *First City*, the lack of information kept the stock price down artificially. In fact, the very quote the SEC cites about "injury to other market participants," is preceded by a statement that the disclosure of the holdings "suggests to the rest of the market a likely takeover and therefore may increase the price of the stock." *Id.* Here, Prestige's stake in Zhongpin was disclosed and the marketplace was advised of Prestige's activist investor interests. It cannot be legitimately argued that the disclosure of the SogoTrade shares in addition to the accurately disclosed Prestige shares and intentions would have had any impact on the stock price or on any investor's decision to purchase or sell.

The SEC also references *SEC v. Drexel Burnham Lambert Inc.*, for its citation back to *First City Financial*, 837 F. Supp. 587, 607 (S.D.N.Y. 1993). *Drexel* also discussed the purpose of Section 13(d), stating it "was intended to alert investors to potential changes in corporate control so that they could properly evaluate the company in which they had invested or were investing." *Id.* Once again, the facts in this case may constitute a technical violation, but not a violation of the public policy behind Section 13(d). Prestige's shares and intentions were

accurately disclosed to the marketplace.

Additionally, similar to *First City*, the *Drexel* case involved much more than a small number of additional shares not being disclosed on a Schedule 13D; it involved “efforts to gain control by illegal means,” a publicly traded company. *Id.*, at 589. Other defendants in that case included Michael Milken and the case related to the massive scams that landed him and Ivan Boesky in prison. *Id.* It was not a case where an acquirer’s shares and intentions accurately were disclosed but a relatively small additional purchase was not.

Finally, the SEC’s remedies request is internally inconsistent. It claims that the reason one would wilfully violate Section 13(d) is to keep the price of the stock artificially low. That does not comport with its claim that the front-running endeavor was Yang’s effort to benefit from the *increased* share price resulting from Prestige’s subsequent purchases. The failure to disclose the SogoTrade purchases did not reflect Yang’s attempt to keep Zhongpin’s price low. The SogoTrade purchases did not violate the policy behind Section 13(d). The infractions are technical.

4. *The front-running did not harm Prestige.*

Yang did not harm Prestige. Prestige made more than seven million dollars on its Zhongpin purchases, and there is no evidence whatsoever that its gains were in any way diminished by front-running. There is no evidence, for example, that the trading in the SogoTrade account artificially inflated the price of Zhongpin securities such that Prestige had to pay a higher price.

In fact, On March 15, Prestige paid a *lower* average price for its Zhongpin shares than the price paid for the shares purchased in the SogoTrade account on March 14. On March 14, the SogoTrade account purchased a total of 50,000 shares of Zhongpin stock at an average price of

\$8.57 per share. (SEC Br., Ex 1, p. 5.) The next day Prestige purchased 600,000 shares of Zhongpin stock for an average price of \$8.38 per share. (SEC Br., Ex 1, p. 3.) Prestige did not pay more than \$8.57 per share until March 21, seven days after the SogoTrade purchases, and after Prestige itself already bought more than 1,300,000 Zhongpin shares. (SEC Br., Ex 1, p. 3.)

Finally, the Prestige investors have asked that this Court not to punish Yang. (See letters from Prestige, “Exhibit A.”) Were the only purported victim of the fraud is beseeching the Court *not* to sanction the defendant, it would be inappropriate to do so.

5. *The degree of scienter is slight.*

In seeking support for an injunction, the SEC exaggerates the degree of scienter by rehashing the same purported “rampant deception” claims it used to try to persuade the jury that Yang and Prestige engaged in insider trading—claims the jury rejected. Moreover, the SEC’s logic leads to a dead end. Even assuming the worst, that Yang did not tell Baron of his investment plans and sent account forms with inaccuracies to SogoTrade and Interactive Brokers, such has nothing to do with front-running or filing an inaccurate Schedule 13D.

At worst, those actions reflected Yang not wanting to let Baron know that he was getting ready to leave Baron to start his own investment company. The idea that Yang put inaccurate background information on the SogoTrade account opening documents in an effort to hide front-running from Prestige makes no sense because his name was on the account itself. Of course, underlying the absurdity of the SEC’s argument is the fact that Prestige permitted Yang to personally purchase the same securities that Prestige bought. (Xiao Dec. Par. 5, attached as “Exhibit C.”) There was no reason to hide anything from Prestige. Accordingly, none of the purported deceptions had anything to do with front-running or filing a false Schedule 13D. This case does not involve a high degree of scienter.

Importantly, there is not repeated knowing deceptive conduct. This is not a case of a Ponzi scheme or some other investment scam. This case involves one incident with one stock at one point in time. Yang has no disciplinary record. Never before—and never in the two years since the SEC charged Yang— has he run afoul of the law. The SEC argues Yang’s degree of scienter is similar to the level in *SEC v. Ginsberg*, (362 F.3d 1292) 11th Cir. 2004)) and *SEC v. Payne*, 2011 WL 393630. *Ginsberg*, however, is an insider trading case that involved a great deal of scheming and *Payne* is a multi-year Ponzi scheme case where the perpetrators went to jail after stealing millions of dollars from hundreds of investors. (362 F.3d 1292 (11th Cir. 2004); 2011 WL 693630, at *3.) It is improper to compare Yang’s actions to the level of scienter involved in an insider trading case and a massive Ponzi scheme.

Perhaps the reason the SEC is not citing to cases involving similar conduct is because of the dearth of similar cases. The SEC added the front-running and Section 13(d) claims many months after it brought its initial insider trading case. One has to question whether the SEC ever would have brought those claims had they not been tacked on to the insider trading case. Yang’s conduct does not amount to a significant level of scienter.

6. *Yang should not be punished for maintaining his innocence.*

This Court should not punish Yang because he vigorously contests the SEC’s accusations. *First City*, a case the SEC cited in its own brief, makes this quite clear: “The securities laws do not require defendants to behave like Uriah Heep in order to avoid injunctions. They are not to be punished because they vigorously contest the government’s accusations.” 890 F. 2d at 1229.

Despite the D.C. Circuit’s holding, the SEC argues that Yang’s claims of no wrongdoing should be held against him in considering whether to impose an injunction. The SEC cites to

SEC v. Lipson, but the language to which the SEC cites relates not to an injunction, but to the imposition of penalties under the Insider Trading Sanctions Act. 278 F.3d 656, 662-64 (7th Cir. 2002.) This is no longer an insider trading case and, thus, the *Lipson* analysis is inapplicable. The only other case to which the SEC cites for its proposition, is an unpublished magistrate's report and recommendation out of the Western District of Michigan in a case involving a default judgment against defendants who orchestrated a Ponzi scheme and had been involved in four different securities frauds over the prior decade. *SEC v. Abernathy*, 2012 WL 7679270, at *3-*5 (W.D. Mich., Nov. 30, 2012).

Even if those cases were controlling, there is nothing to support the SEC's claim that Yang's testimony at trial was anything less than truthful. There was no testimony contradicting Yang's claim that he did not make the Zhongpin purchases in the SogoTrade account. The SEC references its expert. But the SEC's expert did not testify that Yang made the trades. He testified that the computer Yang travelled with was the same computer from which trades were made—and he conceded that multiple people may have been involved in the trading. Yang never testified to the contrary. This is much more than mere nuance. Caiyin Fan has explained that the trades were executed via remote login through that computer. (See Fan Dec., Par. 11-14, attached as "Exhibit D.") While this may seem out of the ordinary from a US perspective, it is not out of the ordinary coming from a Chinese perspective given Chinese Internet access issues.

The SEC's expert did not contradict this. The expert testified that a computer accessed directly and a computer accessed remotely by a user at another computer will leave the same public facing IP address footprint. For example, public facing IP address information will appear the same whether one accesses Facebook from his home computer while sitting in his home, or if one accesses Facebook from his home computer while sitting in his office across town.

Additionally, nothing contradicted Yang's testimony that he and Fan agreed that only Fan, not Yang, would have an interest in the proceeds in the account. (*Id.* Par. 7, 9.) There is nothing to support the SEC's claim that Yang did not testify truthfully.

Finally, the SEC claims that the jury found Yang to be a liar because it ruled against him. We do not know why or how the jury reached its verdict. We do not know what pieces of testimony or documents persuaded the jury. We do not know what parts of the jury instructions the jury did or did not focus on. We do not know what was going on in their minds. It is wholly inappropriate, therefore, to infer that the jury decided Yang was not truthful—particularly because it found in Yang's favor on the insider trading charge.

7. *Yang has been punished enough.*

Yang has, and will continue to pay a high penalty. He does not deserve an additional penalty. First, the SEC's insider trading charge against Yang has all but destroyed his reputation. In April 2012, the SEC charged Yang with insider trading (without first speaking with him), issued a press release and posted to its web site a 21 page complaint, alleging Yang committed insider trading. (Press release attached as "Exhibit E.") The media quickly ran with the story. (The SEC later amended its complaint to throw in the front-running and Section 13(d) charges, but the press showed no interest in those claims.) Within days, newspapers, blogs and industry news outlets covered the story. (A sample of the English-written articles is attached as "Exhibit F.") *The New York Times*, *Bloomberg Businessweek*, *Reuters*, the *Chicago Tribune*, London's *Financial Times* and London's *Independent* all reported the story. They all repeated the SEC's insider trading allegations against Yang and all posted their stories to the Internet for all to see.

Food industry, investment industry and legal industry media, such as *Just Food*, *Meatandpoultry.com*, *The Blog of LegalTimes*, *Whistleblowerlawyernews*, *Investorshub*, *Investor*

Village, and *Secactions.com*, also ran with the story. Further, Asian focused media also covered the SEC's allegations, with articles in *Chinabusinessknowledge.com*, and *Chicago Asian Community Examiner*.

Most damaging to Yang's reputation was the coverage in the Chinese business media. Numerous Chinese media outlets carried the story of the SEC's insider trading charges and asset freeze, trashing Yang's reputation in his homeland. (Samples of English translations of the Chinese articles attached as "Exhibit G.") These are not merely Chinese blogs. They are widely read and widely respected Chinese news outlets, similar to *CNN* and *The Wall Street Journal*.

Yang has had to live with the SEC's press release and the barrage of press reports. It took a terrible toll on Yang's reputation. One does not simply recover from such bad press, even though the legal system did not find him liable. In fact, other than securities law industry media, there was little coverage of the jury clearing Yang on the insider trading claims. The lasting media impression of Yang is that he is an insider trader.

The day after the SEC filed its insider trading charges against Yang, Yang's counsel at the time implored the SEC to consider the damage that insider trading charges would bring upon Yang. "[T]he reputational injury to Mr. Yang is a serious concern and I wanted to get this out to you as soon as possible in the hope that there will be some way of mitigating that harm," his letter ended. ("Exhibit H.") Yet the SEC continued to pursue its insider trading case, irreparably damaging Yang's reputation.

Additionally, the mere fact the jury did find Yang liable on the front-running and inaccurate Schedule 13D charges has essentially ended his ability to earn a living in trading or financial services. A jury has found Yang liable for securities fraud, and the impact of that verdict is enough. Additional penalties are unwarranted.

8. *This Court should consider Yang's community involvement.*

Yang asks that in determining whether to impose an injunction, this Court consider the good work Yang has done for his community in China. For several years beginning well before the facts giving rise to this case, Yang has been involved with Zigen Group, a US-based organization dedicated to the betterment of education for women living in rural areas of China. Zigen's Chairwoman, Pat Yang (no relation) asks this Court to consider his good deeds and "extend maximum mercy and kindness" to Yang. (See Letter from Pat Yang, attached as "Exhibit I.") Pat Yang highlights Yang's efforts to change China's rural education policy which has benefitted millions of rural Chinese women. *Id.* Yang's good community work should militate against the imposition of an injunction.

II. The SEC's penalty request is overstated and without basis.

The SEC's penalty request seeks everything under the sun, and then some. This is a case where Yang made nothing and harmed no investors. It involves one single stock and one single "victim" who does not want Yang punished. The Court has the discretion to determine the appropriate penalty. *SEC v. Daly*, 572 F. Supp.2d 129, 132 (D.D.C. 2008). It should reject the SEC's request for maximum penalties.

A. *The inaccurate Schedule 13D is one violation, not four.*

The SEC takes one inaccuracy about one buyer of one stock and multiplies it by two. Then it multiplies it by two again. This Court should treat the inaccurate Schedule 13D as one violation.

1. *Yang should not be penalized for a lesser included offense.*

A violation of Section 10(b) requires a finding of scienter. For that, the Court, in its discretion, may impose a monetary penalty of up to \$75,000.00. A violation of Section 13(d) does not require a finding of scienter. For the exact same conduct, the SEC is seeking a double

penalty. First, it seeks a penalty for the Section 10(b)—scienter based—violation. Then it seeks double the penalty for the same conduct under Section 13(d)'s non-scienter standard. It is inappropriate for the same conduct to lead to a double penalty, one for scienter and one for non-scienter. With a finding of scienter, a penalty for the non-scienter version of the same conduct should not be applied.

In any event, the Section 13(d) violation carries a First Tier, as opposed to a Second Tier maximum penalty. Thus, even if this Court determined to impose penalties both for Section 13(d) and for 10(b), the maximum penalty is \$82,500 (one scienter-based claim and one non-scienter-based claim), not \$150,000 (two scienter-based claims).

2. *There was one instance of Schedule 13D misconduct, not two.*

The SEC has not cited any case involving an inaccurate Schedule 13D where the initial disclosure and its amendment were treated as two distinct violations for the purpose of the imposition of penalties. While the inaccurate Schedule 13D was filed twice, the second filing was nothing more than an amendment to the first filing, showing truthfully that Prestige had increased its ownership of Zhongpin securities.

Additionally, there was nothing in the jury's verdict indicating that it found more than one violation. This Court should treat it as one violation.

B. *The SEC overstates the front-running violation.*

The SEC mischaracterizes the front-running violation as a Third Tier violation. Additionally, there was one front-running violation, not three.

1. *The front-running is a Second Tier—not a Third Tier—violation.*

As an initial matter, the SEC is wrong to treat the front-running violation as a Third Tier violation. To satisfy a Third Tier violation, the violation must result in substantial losses or

create significant risk of substantial losses to other persons. The SEC did not seek to prove, and the jury did not find, that Yang's conduct caused or threatened any loss. Thus the Court may not impose a Third Tier maximum penalty. *See United States v. Pfaff*, 619 F.3d 172, 174-75 (2d Cir. 2010) (because the jury made no findings as to pecuniary gain or loss caused by defendant's conduct, district court erred by calculating a fine supported only by the district court's own pecuniary loss finding).

The SEC did not attempt to prove any loss to Prestige because there was no loss or risk of substantial loss. The sum total of the front-running is that the SogoTrade account made Zhongpin securities purchases beginning on March 14, and Prestige began its purchases on March 15. It is outlandish to claim that Prestige was at any significant risk of substantial losses because of the purchases in the SogoTrade account that began 24 hours before Prestige began the same thing.

Without demonstrating the loss or likelihood of substantial loss a Third Tier maximum penalty is inapplicable. *See SEC v. Pattison*, 2011 WL 723600 *5 (N.D. CA. Feb. 23, 2011); *SEC v. Pallais*, 2010 WL 5422531 *4 (S.D.N.Y. Dec. 23, 2010). In *Pallais*, the court rejected the applicability of the Third Tier maximum because the actual investors' loss was not substantial and that the defendant's conduct did not pose a risk of substantial loss. *Id.* Because there is no substantial loss this Court should treat the violation as a Second Tier violation.

Finally, as noted above, Prestige, the only purported victim, is asking this Court not to impose penalties on Yang. ("See letters from Prestige investors, attached as "Exhibit A.")

2. *The front-running occurred one time—not three times.*

The SEC arbitrarily divided one incident of front-running into three categories. These categories, however, are an artificial concoction and this Court should disregard them. The

front-running charge is based on the SogoTrade account buying Zhongpin securities on March 14, while Prestige began its purchases on March 15. That some of the purchases were in common stock and other of those purchases were in options does not lead to an additional violation. Nor is it legitimate to claim there were multiple violations because some of SogoTrade's purchases were completed on March 14 and others were completed on March 15.

Moreover, there is nothing to indicate that the jury verdict included any March 15 purchases. The jury instruction said nothing about finding that purchases on March 15 also constituted front-running. By March 15, Yang unquestionably already instructed Maggie Shum, the Prestige trader, to begin Prestige's purchases of Zhongpin securities—as Prestige's purchases began on March 15. No evidence was presented to the jury that the SogoTrade purchases on March 15 were executed prior to Yang's instructions to Shum to begin Prestige's purchases. Thus, the only SogoTrade purchases in Zhongpin that are properly part of the front-running case are the March 14 purchases. And even if this Court includes the purchases completed on March 15, there is no reason to consider those purchases as a separate violation.

III. The SEC's disgorgement number is wrong – there were no profits.

Disgorgement is aimed at forcing a defendant to give up the amount by which he was unjustly enriched. *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987.) The SEC claims the front-running profits were \$151,432. That is false. The SEC tries to inflate the profits (as it also did during the trial) by using the phrase “realized *or* unrealized gain,” [emphasis added] as of March 23, 2012. (John Kustus Dec., Exhibit 1 to SEC Br. Par 10.) Those are not actual profits. Those are unrealized increases in value. The profits can be calculated only as the actual profit obtained, not whatever the value happens to be on a given date. For example, one may have bought stock for \$1,000 on day one, and the value may have gone to \$2,000 on day two and back

down to \$1,000 on day three, when the investor sold the stock. Nobody would argue that the investor's profits were \$1,000. The profits are calculated when the stock is sold—in the case of the example, the profits are zero.

Regarding Zhongpin options as summarized by the SEC's Kustusch, there were purchases of 2,878 options in the account for a total cost of \$186,939.55. *Id.* On March 16, 307 of the options were sold for \$4,438.87. The remainder of the options expired worthless, resulting in a *loss* of \$182,500.68.

Regarding Zhongpin stock as summarized by the SEC's Kustusch, the total profit from purchases in the SogoTrade account is \$43,908.25. That number is determined by calculating the following: per the SEC's Kustusch, 50,000 shares were purchased at an average price of \$8.58. 5,000 of those shares were sold on March 16 and March 21, for a loss of \$1,083.17. The remaining 45,000 shares were never sold. Zhongpin management purchased them in the take-private transaction for \$13.50 each, for a profit of \$44,991.42. Subtracting the loss of \$1,073.17 from the profit of \$44,991.42 results in a total profit on the stock of \$43,908.25. Netting the \$182,500.68 loss from the options transactions against the \$43,908.25 gain from the stock transactions, the SogoTrade transactions resulted in a *net loss of \$138,592.43*. There were no profits.

The fact that there were no profits in the SogoTrade account should end the disgorgement analysis. Even if this Court considers disgorgement simply based on unrealized—or temporary paper—profits, the SEC's argument is flawed because SEC does nothing to substantiate that those gains are a result of the front-running.

The rule that the SEC need establish only a reasonable approximation of the disgorgement amount does not excuse the SEC from proving that there was, in fact, a causal

connection between the violation and the alleged profit—something the SEC cannot do. The Court's authority to order disgorgement extends only to profits that are, in fact, causally connected to the violation. *First City*, 890 F.2d at 1231 (the court "may exercise its equitable power only over property causally related to the wrongdoing."). Yang has no burden unless the SEC first establishes a causal connection between Yang's purported gain on a violation. See *SEC v. Johnson*, 2006 WL 2053379 *9 (S.D.N.Y. Jul. 24, 2006.)¹

With only a temporary price increase and no actual realized gains, disgorgement is

¹ The SEC may argue that Prestige's purchases of Zhongpin pushed up the price of the stock, which provided a gain as a result of the front running. The SEC notes that Prestige's buying after the purchases in the SogoTrade account pushed up Zhongpin's price by 15.5% over the two weeks it purchased Zhongpin stock, which would have improved the performance for the SogoTrade account. (SEC Br. P. 2.) But while it may be true that Zhongpin's stock price increased by 15.5% over two weeks, it is a fallacy to conclude that it was Prestige's purchases that caused the increase. Indeed, the SEC's Kustusch was careful not to make that assertion in his affidavit or at trial. Paragraph 6 of his affidavit, to which the SEC cites, states simply that the stock price increased—it made no claim of the cause of the increase. The fact is, there is no evidence whatsoever, of causation between Prestige's purchases and Zhongpin's stock price. Without evidence of causation, it is improper to conclude that the price of the Zhongpin securities in the SogoTrade account was in any way improved by Prestige's Zhongpin purchases.

Moreover, even assuming there was some evidence of causation, there certainly is no evidence of the extent of the causation. Did Prestige's buying increase Zhongpin's stock price by 5%? 10%? That evidence is non-existent. Without such evidence, the SogoTrade account's temporary benefit is nothing but theoretical and speculative.

inappropriate. Even if there were profits, there is no causal connection between the front-running and the profits. Thus, this Court should not order disgorgement.

IV. Prejudgment interest on disgorgement is not warranted.

This court can, but is not required to, award prejudgment interest on the disgorgement amount. In deciding whether to award prejudgment interest, courts consider whether the interest is compensatory or duplicative and whether the equities in the particular case weigh in favor or against an adjustment for interest. *See F.D.I.C. v. UMIC, Inc.*, 136 F.3d 1375, 1388 (10th Cir. 1998). Here, because there were no profits on the Zhongpin securities purchases in the SogoTrade account, and because there were no losses to Prestige, it would not be appropriate to charge Yang interest.

CONCLUSION

WHEREFORE, Defendant Yang requests that the Court deny the SEC's Motion for Remedies.

Dated: April 28, 2014

/s/ Howard J. Rosenberg

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